SUPREME COURT OF THE UNITED STATES.

No. 395.

JOHN H. INGLE, ADM'R DE BONIS NON, ETC., OF ANN R. DERMOTT, DECEASED, AND HORACE STRINGFELLOW, ET AL., APPELLANTS,

vs.

ZEPHANIAH JONES.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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1 In the supreme court of the District of Columbia, the 20th day of December, 1866.

I, Return J. Meigs, clerk of the supreme court of the District of Columbia, certify that originals, of which the following writings are true and complete copies, are on file and of record in the clerk's office of said court; and that said originals constitute the record of the proceedings of said court, in a certain cause therein depending, and lately decided, entitled:

ZEPHANIAH JONES
vs.
HORACE STRINGFELLOW *et al.* } 502 equity.—Docket 7.

In testimony whereof I have subscribed my name, and caused the seal of the said supreme court to be hereunto affixed, the day and year aforesaid.

[L. S.] R. J. MEIGS, *Clerk.*

2 To the supreme court of the District of Columbia, in chancery:

Zephaniah Jones, of the city of Washington, in the District of Columbia, brings this, his bill of complaint, against Horace Stringfellow, E. R. Lippett, Joseph Pachard, William Pendleton, Clement Butler, Smith Pyne, J. W. French, Henry H. Bean, Samuel Rideout, John A. Smith, David Saunders, John Saunders, Henry May, Charles Stott, Thomas Miller, Catherine F. Thompson, Robert James, Covington Smith, executrix of Richard Smith, deceased; Thomas Miller, executor of Walter Ives, deceased; Peter R. Hawley, Elizabeth Hawley, and other children of William Hawley, deceased, late of said city; Genetta Johnson, Sophie McCormick, John H. Ingle, administrator de bonis non cum testamento annexo of Ann R. Dermott, deceased; John H. Ingle and Osborn Ingle, executors of John P. Ingle, deceased; William B. Hill and Catherine B. Hill, his wife; Robert S. Chew and Elizabeth R. Chew, his wife; Louisa B. Smith, John Carroll Brent, Catherine Smith, George W. Tubman, and Mary E. Wilmer, executors of M. D. Tubman, deceased; John R. Neiruseau and J. C. Neilson, John Garlington, Richard Simpson, Hiram
3 I. King, Elfriede Lanzberg, Richard W. Carter, S. M. Meyerberg, and the following heirs at law of said Ann R. Dermott: Maria Anderson, Robert James, Dade Hooe, Mary Hooe, and Lucy Daniel, and all other heirs-at-law of said Ann R. Dermott.

And thereupon your orator shows that Ann R. Dermott, late of said city of Washington, departed this life on the —— day of September, 1860, and by her last will and testament, dated on the 28th of July, 1847, and admitted to probate by the orphans' court of said District, vested in her executors, for an uncertain term, the care and management of all her real estate, with power to lease and rent out the same, and to collect the rents and profits thereof; said uncertain term to continue until said executors had fully executed and fulfilled certain trusts and duties in said will specifically set forth, among which was the payment of all just debts and of certain legacies which payment was in and by said will made a charge upon said real estate. That to enable said executors the sooner to execute said trusts they were, in addition to said power to
4 lease and rent out, invested with power to raise money on the security of said real estate, by mortgages or other liens, and with the further power of selling a portion of said real estate, said portion consisting of lots two (2) in square seven hundred and five (705) and lot fifteen (15) in square seven hundred and twenty-nine, (729,) in said city, the residue of said real estate consisting of parts of lots one (1) and twelve, (12,) in square four hundred and thirty, (432,) in said city, being excepted from said power of sale. That subject to said term vested in said executors and their said powers and control over said real estate the same was devised to Horace Stringfellow, E. R. Lippett,

Joseph Pachard, William Pendleton, Clement Butler, Smith Pyne, J. W. French, Henry H. Bean, Samuel Ridout, Walter Jones, Richard Smith, John P. Ingle, Aaron O. Dayton, David Saunders, John Saunders, Stephenson Scott, Henry May, Charles Stott, and Thomas Miller, and the survivors and survivor of them, and to their and his heirs and assigns forever in trust for such body corporate as might during their lives, or within twenty-one years after the death of
5 the survivor of them, be legally constituted for the conducting and administration of the charity hereinafter mentioned, and until the creation of such body corporate in trust to hold and manage said real estate, and to collect the rents and profits thereof, and said rents and either to invest for the benefit of said future corporation, or in their discretion to expend the same towards establishing, endowing, and administering said charity in anticipation of said corporation and until it should be created, and upon such creation in further trust, to convey and surrender to such corporation all the said real estate and the accumulated rents and profits thereof, and all property purchased with said rents and profits, and also to surrender to said corporation the exclusive government and control of said charity.

That the charity to which the said real estate was dedicated as aforesaid was a female orphan asylum in said city, to be designated by such style as said trustees should elect, and to be constituted and conducted upon certain rules and principles in said will prescribed, and into which asylum there were to be received and there maintained and educated such destitute white female
6 orphans as the said trustees, during their administration of said charity or the said corporation when it should come in esse, should in their discretion select, and that after the establishment of said asylum, and after it had been in actual operation for two years, and after all expenses incurred in its establishment and operations had been discharged, so that the income from said real estate should be subject to no charge except the yearly charge of maintaining and conducting said asylum, then one-third of the net annual income of said real estate was to be applied to the equipment and transportation of free colored colonists going to settle in Africa in any of the settlements then established by the African Colonization Society at Washington, said application to be under the exclusive direction of said trustees and of said corporation when it should come in esse.

That the legacies charged upon said *said* real estate by said will are as follows: the payment of an annuity of four hundred dollars to Elizabeth L. Thompson and said Catherine F. Thompson during their joint lives, and after the death of either, to the survivor for life, said annuity to be a charge
7 upon said real estate after the expiration of the uncertain term therein bequeathed to the executors as aforesaid; the payment of one thousand dollars, with interest from the death of testatrix, to Robert James of Alabama; of a like sum with like interest to Richard Smith; of five hundred dollars with like interest to Walter Jones; and if the three last named legatees or any of them should die in the lifetime of testatrix, then the legacies or legacy given to them or him so dying, should go to his or their children respectively; the payment of five hundred dollars with like interest to the widow and children of the late William Hawley; of two hundred dollars with like interest to Genetta Johnson, and of two hundred dollars with like interest to Sophia McCormick.

That by said will the said Horace Stringfellow, Clement Butler, John A. Smith, Richard Smith, and John P. Ingle, Charles Stott, John Saunders, and Stephenson Scott were nominated as executors, and that said will further provided that in the event of the death of the last survivor of said executors before the completion of the trusts and duties devolved on them, (until which
8 completion they were to be invested with the uncertain term, powers, and control aforesaid,) then that the execution of said trusts and duties should devolve on such person or persons as the vestries of St. John's church and

Trinity church in said city should elect; all which, among other things, will more fully appear by a certified copy of said last will and testament which your orator files herewith, marked Z. J., Exhibit No. 1, and prays may be taken as part hereof.

And your orator further shows that said persons named as executors declined to answer said office, with the exception of said John P. Ingle, to whom letters testamentary were issued by said orphan's court on the day of 1860; that said John P. Ingle subsequently died testate, and that thereupon said court issued to said John H. Ingle letters of administration de bonis non cum testamento annexo on the estate of said testatrix, and to Osborne Ingle and said John H. Ingle letters testamentary on the estate of said John P. Ingle.

That said legatees, Robert James, Richard Smith, and Walter Jones,
9 survived said testatrix; that said Smith died in 1864, and said Covington Smith, his widow, was duly appointed his executrix; that said Jones died in 1861, and said Thomas Miller was duly appointed his executor; that the widow of William Hawley is dead, but children are living entitled to said legacy, but they do not reside in this District, and their names, except said Peter R. Hawley and Elizabeth Hawley, are unknown to your orator; that your orator believes that said Robert James, Genetta Johnson, and Sophia McCormick are now living, but said Robert James is a non-resident of this District; and that said annuitcists Elizabeth L. Thompson and Catherine F. Thompson survived said testatrix, but never resided in this District, and that the former is deceased and no letters upon her estate have been issued.

Your orator further shows that said lot 2 in square 705, and lot 15 in square 729, were sold by said testatrix in her lifetime, and that the only real estate to which she was in any wise entitled at her death, was the aforesaid parts of lots 1 and 12 in square 432, situated at the corner of Market space and 7th street west.

That on the 22d of April, 1851, your orator and said Ann R. Dermott
10 entered into a contract for the removal of the old buildings which for many years had stood on said parts of lots, and the erection of certain new buildings according to certain specifications made part of said contract, and upon certain terms of payment in said contract mentioned, a copy of which contract and specifications, marked Z. J., No. 2, your orator files herewith as part hereof; that your orator fulfilled his part of said contract, save so far as hindered and prevented by said Ann R. Dermott, and also did and supplied certain extra work and materials; and your orator admits that said Ann R. Dermott paid him the instalment of $5,000 due on the 1st of July, 1851, under said contract, but as to the residue of the terms of payment provided for by said contract, your orator shows that, though the fulfilment of the same was by him duly demanded, the said Ann R. Dermott failed and refused to pay the instalment payable by said contract on the 1st of October, 1851, and also failed and refused to pay the $14,000, or to give bond and security for the same as provided by said contract; and that the said Ann R. Dermott also failed
11 and refused to pay for said extra work and materials, though payment therefor was duly demanded; so that for the work and materials done and *and* supplied by your orator in pursuance of said contract, and in addition thereto at the instance of said Ann R. Dermott your orator has received no further compensation than said sum of $5,000 paid as aforesaid; that after the refusal of said Ann R. Dermott to comply with the terms of payment provided by said contract, and also to pay for said extra work and materials, your orator brought suit to recover the amount due him; that pending said suit said Ann R. Dermott died, and her said executor, John P. Ingle, became the defendant thereto; and that upon the death of said John P. Ingle, the said John H. Ingle, administrator de bonis non cum testamento annexo, became defendant thereto; and that at the trial of said suit before this court sitting at law, the verdict of

the jury was that said Ann R. Dermott was in her lifetime indebted unto your orator in the sum of twenty thousand one hundred and thirty-six $\frac{23}{100}$ dollars, with interest from April 5th, 1852, for which amount, with $ costs
12 of said judgment, was rendered, which judgment, upon appeal taken to this court in banc, was duly affirmed, and that upon the rendition of the judgment for said amount the auditor of this court was directed to inquire whether there were assets in the hands of said John H. Ingle to pay the whole or any portion of said judgment, and that said auditor has reported that there were no assets applicable thereto, and your orator prays leave to refer to said judgments and report as part hereof.

And your orator avers that the said judgment in his behalf is, with costs, wholly unsatisfied, and that the estate of said testatrix is indebted to him for work done and materials furnished at her instance in the amounts of not less than $10,000, inclusive of interest, but he is advised that said judgment is conclusive evidence and an estoppel as to the amount of said indebtedness upon both your orator and all parties representing said estate, real or personal, and he is willing to stand to and abide by said judgment, and hereby charges and relies upon the same as such conclusive evidence and an estoppel.

Your orator further shows that in addition to and pending said suit he
13 filed a bill in equity, which is still pending in this court, wherein he prayed that specific performance by said Ann R. Dermott of said contract, so far as the same has not been performed, might be decreed, which bill was answered by said Ann R. Dermott, and the replication filed, and sundry proofs taken, and that in said suit it was ordered, on notice of the solicitor of said Ann R. Dermott, that your orator should elect between his said suit at law and said bill in equity as to the $5,000 payable under said contract on the 1st of October, 1851, and that your orator accordingly elected to prosecute at law for said amount with interest, all which, by reference to said proceedings in equity, will more fully appear; and your orator prays that said proceedings may be held and taken as part hereof. And inasmuch as said order to elect was made in the lifetime of said Ann R. Dermott, and to prevent her being doubly impleaded for said sum of $5,000 with interest, and inasmuch as your orator has at law established his said debt and exhausted proceedings thereat to obtain payment, and now comes into this court as auxiliary to a court of law,
14 and after the death of said Ann R. Dermott, to reach the real estate of said Ann R. Dermott, an independent fund for the payment of debts which he cannot reach without the aid of this court, your orator is advised that said order and election thereunder constituted no bar to any portion of the relief hereby sought, and he prays that said order may be discharged.

Your orator further shows that in consequence of the want of personal assets, as shown by said report of the auditor, and as your orator avers the fact to be, it is necessary to resort for the payment of the debts of said Ann R. Dermott to the real estate left by her; that the same is bounded as follows: Beginning at the southeast corner of said square four hundred and thirty-two, (432,) and running thence west forty-seven (47) feet and two (2) inches, thence north ninety (90) feet, thence west fifty-two (52) feet four and half ($4\frac{1}{2}$) inches, thence east one hundred (100) feet to 7th street west, and thence with said street to the beginning; and that said Ann R. Dermott died seized in equity in fee and possessed of said real estate, with the improvements and appurtenances,
15 subject however to the following deeds of trust: To Richard Smith, in fee, dated June 29th, 1840, to secure a debt to Catharine Smith, of which debt about $2,300 is still unpaid; to said Smith, dated January 28th, 1850, to secure certain debts, all of which have been paid except about $1,000 due to George W. Tubman and Mary E. Wilmer, executors of M. D. Tubman deceased; to said Smith, dated July 22d, 1852, to secure Elizabeth Bolton $1,000, which debt is unpaid; to John Carroll Brent, dated May 18th, 1853, to secure a debt

to John R. Neinsee and Neilsor, which debt has been paid except about $1,700; to said Brent, dated March 14th, 1857, to secure Thomas Carbury and others trustees of the Bank of the Metropolis, a certain debt, which has since been paid except about $700, which balance has been duly assigned to and is now held by your orator, with the deed of trust securing the same; and to said Brent, dated October 10, 1857, to secure John Garlington and Richard Simpson $8,000, which your orator believes with interest to be unpaid; that the legal title to said real estate is now outstanding in the heirs-at-law of said Richard
16 Smith, who are Catherine B. Hill, the wife of William B. Hill, Elizabeth R. Chew, the wife of Robert S. Chew, and Louisa B. Smith; that in addition to the debt due your orator and those secured as aforesaid, the said Ann R. Dermott died indebted to various persons in sundry sums, amounting in the aggregate to about six thousand dollars; that said John P. Ingle, as executor, and afterwards John H. Ingle, administrator as aforesaid, took possession of and managed and collected the rents and profits of the said real estate; and that the said real estate is now in the occupation of the following tenants: Hiram I. King, Elfriede Lansburg, Richard W. Carter, and S. M. Meyerberger, under different tenancies from said John H. Ingle as landlord; that the terms of said King and Lanzberg expire by limitation on the last day of April next, and that those of said Carter and Meyerberg respectively expire by limitation on the 1st and 4th days of March next, assuming said terms to be valid; but your orator is advised that said John H. Ingle had no authority to create said terms, and that the same are subject to the control of this court.

17 And your orator further shows that said real estate, with the improvements, will bring on an amount more than sufficient to pay all the debts of the said Ann R. Dermott as well as the legacies bequeathed by her, including the aforesaid annuity, and your orator is advised that the said devise in said will to the charity therein mentioned is too vague and uncertain in both its branches for execution, and is illegal and void, and that in consequence of such invalidity the survivors of the aforesaid trustees to whom said real estate was devised hold the same in trust for the heirs-at-law of said Ann R. Dermott, and subject, only with the consent of creditors, to the uncertain term, powers, and control vested by her will in the executor. And your orator shows that the surviving trustees are the said Horace Stringfellow, E. K. Lippett, Joseph Pachard, William Pendleton, Clement Butler, Smith Pyne, J. W. French, Henry H. Bean, Samuel Ridout, John A. Smith, David Saunders, John Saunders, Henry May, Charles Stott, and Thomas Miller.

Your orator further shows that said real estate was in 1795 purchased by James R. Dermott, the father of said Ann R. Dermott, and was by him
18 devised to his son, James R. Dermott, and on the death of said son descended to his heirs-at-law, his brother, John James Dermott, and his sister, the said Ann R. Dermott, whereby she became seized thereof in fee simple; that said Ann R. Dermott never married, and that she left no heirs-at-law on the part of her father, or if any, that the same are non-residents of this district, and your orator, after diligent inquiry, has been unable to find out who they are; that her heirs-at-law are on the part of her mother, and as follows: Maria Anderson, Robert James, Stober James, Dade Hooe, Mary Hooe, and Lucy Daniel, all non-residents of this district, of which your orator is a citizen, and where the debt due him as aforesaid was contracted, and that if there are any other heirs-at-law of the said Ann R. Dermott, they are non-residents of this district, and your orator after diligent inquiry has been unable to find out who they are.

And your orator further shows that the said Elizabeth Bolton died a few days ago, and that no representative has been appointed upon her estate.

19 To the end that the defendants above named may answer this bill, and that said John H. Ingle and Osborne Ingle, executors of said John P.

Ingle, may state a full and particular account of the administration of the personal estate of said Ann R. Dermott, so far as administered by said John P. Ingle, and of all rents and profits received by him from said real estate, and if paid out how, when, and to whom paid out, and that said John H. Ingle, administrator de bonis non cum testamento annexo, may state a like account of the administration of said personal estate, so far as not administered by said John P. Ingle, and of the rents and profits of said real estate received by him, the said John H. Ingle, and if paid out how, when, and to whom paid out, and that said real estate, with the improvements and appurtenances, may be sold, and out of the proceeds of sale may be paid as well the said debt of your orator as of the other creditors above named, and all the creditors of said Ann R. Dermott who shall become parties to this suit and contribute to the expenses hereof, according to such privities as may be just and equitable; and that your orator may
20 have such other and further relief as may be right and his case may require. May it please the court, the premises considered, to issue subpœnas against the defendants above named commanding, &c., &c., and as in duty, &c., &c.

W. D. DAVIDGE,
J. H. BRADLEY,
Sol'rs for Compl't.

21 Z. J.—*Exhibit No.* 1.

In the name of God. Amen. I, Anne Reed Dermott, of the city of Washington, in the District of Columbia, do hereby make and declare my las will and testament in manner and form following, that is to say:

I give to and rest in my executors, hereinafter named, and the survivors of them, the exclusive possession, care, management, and stewardship of all and singular my lands, tenements, and hereditaments, for and during the uncertain term hereinafter prescribed and limited, and no longer; with full power and authority to lease and rent out the said real estate, and to collect and receive all the yearly rents, issues, and profits of the same during the said term, and no longer; and out of such rents, issues, and profits, together with such personal estate as I may leave at my death, not otherwise disposed of, to pay, lay out, and expend such sums of money, and to do, perform, and execute all such commissions, charges, functions, and duties, as by this my last will and testament, or by any future codicil thereto, are or may be required of them as such executors: taking especial care in the first place to keep all the said real estate cleared and discharged of and from all taxes and assessments whatsoever, legally ac-
22 crued on the same at the time of my death, or thereafter accruing at any time during the term of their said stewardship.

I do hereby assign to and devolve on my said executors, and the survivors of them, the following powers, commissions, charges, functions, and duties, charging them with the due fulfilment and execution of the same out of the funds above provided, or hereinafter to be further provided for the purpose:

1. To defray all my funeral charges and expenses; and I request them to employ Samuel Kirby, if living, as undertaker of my funeral. I desire my coffin to be of mahogany, enclosed in a walnut case; I also request that the coffins of my mother and brother be taken out of the pine cases and enclosed in walnut cases.

2. To pay all my just debts, and without regard to limitation of time, if found on examination and according to their best judgment really due in conscience, and among such debts I assume the medical bills of the late Doctor Hunt, and of Doctor Washington, Dawes, and May, for professional attendance on my late mother and brother; and if not paid in my lifetime, desire my executors to pay them in equal pace and proportion with my own debts.

3. As soon as the vestry of Christ church in the City of Washington shall have succeeded in their application to Congress for an addition to the public cemetery, commonly known as the Congressional burying ground, or as soon as such addition or enlargement shall be authorized by the government of the United States, and burial sites shall become purchaseable or grantable therein, then to dispose of my five sites in the old burial ground for the best price that can be got for the same, and to purchase or obtain in any practicable way, twelve other burial sites, in the highest attainable situation of such addition, and therein construct a vault for the reception of the bodies of my late mother, Alice Bird; of my late brother, John James Dermott, and of myself; and to cause our three bodies to be disinterred and removed to such vault, with the proper solemnities and accompaniments incident to the occasion; the vault to be surmounted by a plain monument of small but suitable size, constructed of white Italian marble, and to be engraved with the names, dates of births, and deaths of my said mother and brother and of myself, and with the following legend, "Come, Lord, come that we may be one family with thee in Heaven." I desire the following directions to be observed in the construction of the vault: to be built entirely underground by the best workmen, of the best freestone and water-proof cement, the walls to be as thick as any that are built for the like purpose, and two feet of solid earth to be left between the walls and any neighboring grave, the whole inclosed with a stone wall and iron railing like the public vault; the entrance to be entirely concealed by flag stoneway and covered two feet with soil; the ground inside to be planted with the monthly and evergreen honeysuckles, trained on fixtures of stone or other durable material, and with daily roses of my dear mother's raising, and which I have reserved in Mr. Stephen Scott's garden; and also to erect a handsome but perfectly plain tombstone to the memory of my father, over his grave in the Catholic burying ground.

4. To pay an annuity of four hundred dollars to my two cousins, Elizabeth L. Thompson and Catherine F. Thompson, during their joint lives, and after the death of either, then to the survivor during her life, and if either die in my lifetime, then to the survivor during her life, the annuity to be paid in half-yearly or quarterly instalments, at their or her election, provided that my executors shall stand charged with the payment of said annuity so long as any of the other functions and duties hereby assigned to and devolved on them shall remain executory; from and after the complete execution of which, the said annuity shall stand charged on the rents, issues, and profits of my real estate, and be duly accounted and paid thereout by the persons to whom I shall or may herein or hereinafter devise over the said real estate or the rents, issues, and profits thereof, in fee simple, or in perpetual succession.

The foregoing I desire to be understood as so far the preferred objects and purposes to which I wish the funds placed at the disposal of my executors, be applied, as that the pecuniary legacies hereinafter bequeathed shall not come into collision, or injurious interference with them, and as my debts have a legal preference which it is not in my power to postpone or defer to objects of affection or bounty, if my creditors choose to insist on their strict right of preference, and as the final liquidation and payment of my debts in case such preference be rigidly insisted on, may absorb, for a considerable time after my death, all the said funds, and so long postpone the fulfilment of the objects of affection and bounty to which such fund are also appropriated, and is it is my earnest desire all the latter objects and purposes, including all the said pecuniary legacies, and especially of preference, the particular objects and purposes *including all the said pecuniary legacies, and especially and of preference, the particular objects and purposes* specified in the two last of the preceding articles be carried into effect and accomplished as soon after my death as practicable, and if practicable before the final liquidation and payment of my debts; now,

therefore, it is my wish that my executors make, if practicable, such arrangement with such of my creditors, as may freely consent, as that the payment of such debts be deferred, interest and security, and paid by deferred instalments or otherwise, so as in the mean time, to admit the appropriation of a competent portion of the said funds to the accomplishment, in whole or in part, of the said objects of affection and bounty, including the intermediate payment, in the whole or in proportional parts, of my pecuniary legacies; to which end I shall hereinafter make some auxiliary provisions.

5. To raise and pay the following pecuniary legacies, to wit: to my cousin Robert James, of Alabama, one thousand dollars, with interest from my death; to Richard Smith, one thousand dollars, with the like interest; to Gen'l Walter Jones, five hundred dollars, with like interest; and if the three last named legatees, or any of them, should die in my lifetime, then the legacy or
27 legacies so given to him or them so dying, shall go to his or their children respectively; to the widow and children of the late Revd. William Hawley, five hundred dollars with like interest; to Genetta Johnson, daughter of Dr. Richmond Johnson, two hundred dollars, with like interest, and to Sophia McCormick, two hundred dollars, with like interest.

6. To pay all such debts of my late brother, John J. Dermott, as shall be fully proved to have been contracted by him in the District of Columbia, since his last residence in the city of Washington, from and after April, 1829, and as my executors shall, according to the best of their judgments and discretion, deem due in conscience, and no other debts or pretended debts whatever of his contracting; so as the debts so to be paid exceed not, at the utmost, one thousand dollars; and my own impression and belief is, that they fall far short of that amount, and do not amount to but a small sum. The payment of these debts I desire to have understood and treated, in all respects, as on the same footing, with the same advantages, and subject to the same conditions and limitations as the payments of the pecuniary legacies in the last proceeding article above bequeathed.

28 7. As to all the specific articles of property, such as wearing apparel, personal ornaments, furniture, and household stuff, which I have now with me for personal accommodation, at my lodging house, and all such articles of the like sort and description as I may have at the time of my death, I give and dispose of the same in manner following, that is to say: to my cousin, Mrs. Maria Anderson, of South Carolina, my mahogany wardrobe and mahogany work-table, to be packed and sent to her at the cost and charge of my executors, who shall be allowed for such cost and charge *of my executors, who shall be allowed for such cost and charge* in the settlement of their accounts as executors; and all the rest and residue of such articles of property I give to the said E. L. and C. F. Thompson, or to the survivor of them living at the time of my death; desiring them to select from such articles of property whatever they may wish to retain for their own use, and to distribute the rest among those friends who may more especially bestow their kind attentions on me in my last illness, and contribute to my comfort in those circumstances; and if the said E. L. and C. F. Thompson shall deem such presents inadequate as a suitable return to such friends, then I authorize and request them, or the sur-
29 vivor of them, to demand and receive of my executors two hundred dollars, to be applied in such way towards the gratification of my said friends as they the said E. L. and C. F. Thompson, or the survivor of them, shall deem most fitting to fulfil the wishes of a grateful heart.

I desire that all the aforesaid articles of property be delivered by my executors immediately after my death, without any official inventory or appraisement of the same, to the several legatees of the same respectively.

8. I give and devise to my cousin, Robert James, of Alabama, if alive at the time of my death, otherwise to his children, whatsoever estate, right or interest

is vested in me or may at any time accrue to me, my heirs, executors, or administrators, in reversion or remainder, or any sort of expectancy, by the force and effect of the last will and testament of my late aunt, Mary James, of Stafford county, Virginia.

9. In order to prevent, by all means in my power, the mere possibility, which I have no reason seriously to apprehend, of legal recourse by any creditor against my improved property on 7th street west and Market Space south, all which I desire to have kept sacred to the ultimate purpose for which I intend it, as hereinafter expressed; also to enable my executor to have new
30 buildings erected thereon, or otherwise to improve the property, if they find that by so doing the rents can be advantageously enhanced, so as to extend their facilities and means for discharging and arranging the debts and other pecuniary burdens hereinbefore charged on the rents, issues, and profits thereof, also to place additional facilities and means at their disposal for making amicable and beneficial arrangements with my principal creditors for enlarging and deferring the times of paying off their debts, so as to allow the regular payment of the annuity to the Miss Thompsons, and, if practicable, of the aforesaid legacies, and of my brother's debts, either wholly or in proportional parts from time to time, to go on hand in hand with the payment of my debts, during the time that such debts be in the course and process of liquidation, and before the final satisfaction thereof, always observing, however, the order of preference above described, in case of any unavoidable collision or interference among the different classes of pecuniary claims on my executors, under this, my will; and with a view, in short, to extend the facilities and means of providing for and meeting all exigencies, foreseen and unforeseen, that may arise in the fulfilment of the general or particular intents hereinbefore expressed; now, therefore,
31 I do fully empower my said executors, and the survivors or survivor of them, to raise moneys by loan or loans on the security of all or any part or portion of my said real estate; and for that purpose to mortgage the same, or to execute deeds of trust on the same, or otherwise create liens, either general or specific, on the same, by way of collateral security for any such loan or loans; and also to sell, either by private contract or public auction, according to the best of their judgment and discretion, my two vacant or unimproved lots, to wit: lot 2 in sq. 705, and lot 15 in sq. 729. As to all the rest of my real estate, to wit, the lots and tenements above described, as on 7th street west and fronting Market Space south, consisting of parts of lots 1 and lot 12 in sq. 432, I wish them sacredly kept for the ultimate purposed referred to.

10. I do hereby nominate and appoint the Rev. Horace Stringfellow, the Rev. Clement Butler, John A. Smith, Richard Smith, John P. Ingle, and Charles Stott, and John Saunders, and Stephenson Scott, to be the executors of this my last will and testament, until such time as they or the survivors or survivor shall have fully discharged and paid off all such charges, debts,
32 and legacies, and fulfilled, executed and completed all such functions, trusts, and duties, matters and things, as are hereinbefore provided for, directed, and required, in and by the first, second, third, fifth, sixth, seventh, and ninth articles or clauses aforesaid, of this, my will, and for no longer or other term; and I do devise and require that my executors, or the survivors or survivor, shall and do, at the end of the term so limited for the continuance of their offices of executors, and on the happening of the event or events when the said offices are to cease and determine as aforesaid, surrender and deliver up all my said real estate (except what they have sold of the two lots which they are hereinbefore empowered to sell and dispose of) to the persons hereinafter named as trustees, who are to hold the same in trust for the ultimate uses and purposes to which the same is ultimately dedicated as hereinafter provided; and shall also duly account and pay over to such persons all money and effects

that may have come to their hands, either from my personal estate or from the rents and profits of my real estate, or from the sale of such of my real estate as they are hereinbefore empowered to sell and dispose of, and not duly laid out and expended on or about any of the objects or purposes expressed in
33 the aforesaid seven articles or clauses of this will. And I further will and devise, that if, at the death of the last survivor of my said executors, their offices shall not have ceased and determined by the event or events upon which they are made to cease and determine as aforesaid, and if any of the functions, trusts, or duties devolved on them by any of the aforesaid seven articles or clauses of this will, should there remain executory, then that the burden of the execution of this will, or any office, authority, right or duty appertaining to an executor of this, my will, shall not devolve on the executor or executors or other personal representative whatever of the survivor of my said executors, but upon such person or persons as the vestries, for the time being, or the persons who may happen, for the time being, to compose the vestries of St. John's church and Trinity church, in the city of Washington, shall or may elect to go on and complete the execution of this my will, in so far as the execution thereof is herein committed to my said executors; and I desire that proper letters of administration with this my will annexed, may be granted by the court, or authority competent for the purpose to the person or persons so elected.

11. I give and devise to the Rev'd Horace Stringfellow, the Rev'd E. R. Lippett, the Rev'd Joseph Pachard, the Rev'd William Pendleton, the Rev'd Clement Butler, the Rev'd Smith Pyne, the Rev'd J. W. French, the
34 Rev'd H. H. Bean, the Rev'd Samuel Ridout, Walter Jones, Richard Smith, John A. Smith, John P. Ingle, A. O. Dayton, David Saunders, John Saunders, Stephenson Scott, and Henry May, Charles Stott, and Doctor Thomas Miller, being the trustees above referred to, and to the survivors and survivor of them, and to their and his heirs and assigns forever, all such parts and portions of the said lots H. 12, in square 432, situate on 7th street west, and the open space immediately south of said square, and at the corner of said street and space, as belong to me, together with all the messuages, tenements, houses, and buildings, rights, members, and appurtenances whatsoever, on the said parts and portions of said lots, erected and built, or in any manner appurtenant thereto; also, the two vacant or unimproved lots aforesaid, to wit: lot 2 in square 705, and lot 15 in square 729, with all and singular the rights, members, and appurtenances of the same; all being situate in the city of Washington, aforesaid, and designated in the survey and plan of said city; also all my personal estate and effects not herein otherwise disposed of, together with all other and all residues of my estate, property, and effects whatsoever, not otherwise disposed of by his
35 will, subject, nevertheless, to all such rights in, and power and control over the same, and to such uses and dispositions of the same as are hereinbefore vested in and committed to the discretion of my said executors, for the special uses and purposes and during the uncertain term herein before described and limited, and in trust for the sole and only use of such body corporate as shall or may at any time during their lives, or within twenty-one years after the death of the survivor of them, be legally constituted for the intent and purpose of maintaining, conducting, and administering the charity hereinafter mentioned and described; and in the mean time, that is, until the due creation of the said body corporate, the trustees aforesaid, and the survivors of them, together with such person and persons as shall or may, at any time or times, or from time to time, hereinafter be substituted to the like rights, trusts, and duties in their or any of their place or places in the manner hereinafter prescribed, shall and may have, hold, preserve, and keep all the said estates, property, money and effects in their sole and exclusive possession, care, and management for the due conservation of the same, and of the yearly rents, issues, and profits of

the same in accumulation for the use, benefit, and behoof of the said future corporation; and shall and may collect, accumulate, and invest all such yearly
36 rents, issues, and profits for the exclusive use, benefit, and advantage of the said corporation, or shall and may, in their discretion, lay out and expend such yearly rents, issues, and profits, or so much thereof as they may deem meet and expedient in establishing, endowing, maintaining, and administering said charity, by way of anticipating the powers, functions, and duties of said corporation until it shall come in esse; and finally, whenever, and as soon as the said corporation shall have come in esse, they, the said trustees aforesaid, (of what person or persons soever then consisting,) shall forthwith surrender, convey, and assign over to the said corporation, or to its proper officers, agents or servants, all the said lands, tenements, and hereditaments, with all and singular the appurtenances, and all property, real and personal, in which they may have invested the income, or funds, or any part or portion of the income or funds which may have come to their hands as such trustees, and shall duly account and pay over to said corporation all money and effects which have in any way or manner, or from any source, come to their hands as such trustees, and shall surrender to said corporation the exclusive care, management, and direc-
37 tion of all persons, matters, and things appertaining to its establishment or in any manner dependent thereon, or connected therewith.

The principal charity to which I have dedicated, and to which it is my intention, in and by this my last will and testament, to dedicate the aggregate fund, real and personal, consisting of all the estates, property, and effects whatsoever devised to the said trustees as aforesaid, is a female orphan asylum in the city of Washington, to be designated by such style and title as the said trustees may elect, and which I wish to have constituted and conducted upon the principles and according to the general rules hereinafter prescribed, all subject, however, to such detailed regulations of the interior management and discipline, to such sanctions for enforcing good order and fidelity in the management, and to such visitation as the Congress of the United States, or whatsoever be the then existing authority, creating and competent to create the said corporation, may deem necessary or proper to provide for in its charter.

The following is the general outline of the plan upon which I wish
38 the said asylum to be established and constituted, more especially with regard to those vital objects, the religious, moral, and social training of the young orphans committed to the care of the institution—objects which, I hope, may be ever kept prominent in the view of those to whom the administration of the charity may be, from time to time, confided.

There shall be received into the said asylum, and there maintained, educated, and brought up, such destitute white female orphans as the trustees during the existence and continuance of their said trust and ministrations in the matter of the said charity, or the said corporation, when it shall have come in esse, shall and may, in their best judgment and discretion, select as the most fit objects of the said charity. Especial care should be taken to bestow on these orphans a highly moral and religious education; to instruct and train them in all other respects so as to draw out, improve, and confirm all the best qualities of their minds and hearts, and qualify them for respectability and usefulness in such stations in society and in such occupations as their several talents, dispositions,
and characters may best fit them for; to habituate and inure them to
39 honest industry and faithful labor; to instruct them in domestic economy, and in such arts, trades, and particular callings as may seem best suited to their moral and physical capacities and dispositions. I further desire and recommend that, instead of binding out the orphans apprentices to trades, competent means and instruction be provided for teaching them in the asylum, theoretically and practically, such branches of trade as may be deemed most suitable to their talents and dispositions, that they may be retained in the asylum

as long as it may appear expedient and proper to do so, in order to conform their habits of industry and virtue in the comparative seclusion and under the particular care and vigilance of the asylum, for some reasonable time after they have come to the age of puberty, during which time the profits of their labor and work in the asylum may be advantageously distributed, in just proportions, between themselves individually and the funds of the asylum, and so redound to the benefit of their younger and more helpless sisters in charity. I also recommend to the serious consideration of all the persons, corporate or unincorporate, who come, from time to time, into the administration of the said charity, the expediency and practicability of combining with the peculiar objects
40 of the asylum a school for scholars from without, in which the already educated orphans of the asylum might assist as teachers; from which school, besides other and important advantages, pecuniary contributions might be derived to the resources of the asylum, and its beneficence and usefulness more widely diffused. 'Tis my earnest wish that some exemplary and competent minister of the Protestant Episcopal church, with his wife, should be engaged to superintend the moral and religious conduct, both of the orphans admitted into the asylum and of the persons employed therein, and, if it be at any time practicable and consistent with the more indispensable objects of the charity, that a church be connected with the asylum.

I devise and will that the site of the asylum be purchased, and the necessary buildings be erected, as soon as the yearly income from the yearly rents, issues, and profits of the aforesaid real estate, together with such other funds and resources as may come to the hands of the said trustees, or of the said corporation, may enable them to undertake such buildings with prudence; but I expressly will and require that all the said real estate which shall come to the
41 hands of the said trustees, or of the said corporation, be preserved entire in their hands respectively, and that the yearly income therefrom be laid out and expended in and about the purposes of the said asylum.

After the said asylum shall have been erected and established, and after it shall have been fully supplied with all accessorial requisites for conducting its operations, and after it shall have been in actual operation for the space of two years, and after all the costs, charges, and expenses, incurred in and about its establishment and operations shall have been all liquidated, paid, and discharged, so as to leave the yearly income from the said real estate clear and unincumbered, that is, incumbered with no burden or charge but the yearly charge and expense of maintaining and conducting the said asylum, then my will is, that one-third of the net annual income of the said real estate be applied to the equipment and transportation of free colored colonists going to settle in Africa, in any of the settlements there established by the African Colonization Society at Washington; not that the said society shall have any discretion or control whatever over the fund, the whole of which shall be applied, specifically applied, to the equipment and transportation of such colonists, under the exclusive direction of the
42 said trustees during the existence and continuance of their said trust and ministrations, and of the said corporation after it shall have come in esse.

In order to continue the succession of competent trustees for the administration of said trust, so long as it shall and may remain in the hands of unincorporated trustees, and to prevent the possibility of its falling into the hands of persons claiming as heirs-at-law, or devisees of the said original trustees or any of them, my will is, and I do hereby devise, that in case of any vacancy or vacancies in the body of trustees, occasioned by death, refusal to accept the trust, or resignation of it after acceptance, the surviving or remaining trustees shall elect another trustee or other trustees, as the case may require, in the place or places of the trustee or trustees so dying, refusing, or resigning, and shall, therefor, by proper legal conveyance or conveyances, from time to time, as such vacancies shall or may happen, constitute such substituted trustee or trustees co-tenant or co-tenants of

the legal estate, and co-administrator or co-administrators of the said trust, with the trustees so surviving or remaining; and the same procedure under the
43 like circumstances, shall and may be adopted and pursued by every succeeding body of trustees, whether consisting for the time being in part of original and in other part of substituted trustees, or entirely of substituted trustees.

I repeat, and desire it to be distinctly understood, that the said trustees, and the said corporation, respectively, take all the real estate hereinbefore devised to them respectively, charged with the said annuity to the Miss Thompsons, if they or either of them be then alive, and that the said annuity be thenceforth paid by the said trustees and corporation respectively out of the yearly rents, issues, and profits of the said real estate.

Hereby revoking *revoking* and annulling all former and other wills by me heretofore made, I do hereby make, declare, and publish this my true and only last will and testament, as the same is written on the annexed and foregoing twenty-two half sheets of paper. Witness my proper hand and seal, hereunto subscribed and affixed at the city of Washington, this twenty-eighth day of July, in the year of our Lord, one thousand eight hundred and forty-seven.

Mem.—Certain interlineations and erasures appearing on several of the pages of the foregoing will, were duly made before the execution thereof, to wit,
44 at the end of line 23, on page 2, erasure; at the end of 17, page 5, do.; in line 28, page 9, interlineation; in line 20, page 10, erasure and interlineation; in line 1, page 11, interlineation; and in line 19, do.; in line 6, page 12, do.; in line 6, page 14, erasure; and in line 8, do.; in line 28, page 19, do.; in line 2, page 20, do.; in line 1, page 21, do.; at the end of line 9, page 22, erasure.

[SEAL.] ANNE R. DERMOTT.

The foregoing, as the same is written on the annexed and foregoing 22 half sheets of paper, was duly signed, sealed, acknowledged, and published, by the said testatrix, Anne R. Dermott, in the presence of us, the subscribing witnesses thereto, who subscribe our names as such attesting witnesses at her special request, and in her presence and in the presence of each other, at the city of Washington, in the District of Columbia, this twenty-eighth day of July, in the year of our Lord 1847.

WM. R. RILEY.
W. L. DIXON.
AND. McCORMICK.
MARGARET McCORMICK.
JANE McCORMICK.

45 ORPHANS' COURT, *September* 8, 1860.

DISTRICT OF COLUMBIA, *Washington County, to wit:*

This day appeared William R. Riley, one of the subscribing witnesses to the aforegoing last will and testament of Anne R. Dermott, late of Washington county, aforesaid, deceased, and made oath, on the Holy Evangels of Almighty God, that he did see the testatrix therein named sign and seal this will; that she published, pronounced, and declared the same to be her last will and testament; that at the time of so doing she was, to the best of his apprehension, of sound and disposing mind, memory, and understanding; and that he, together with Wm. L. Dixon, And. McCormick, Margaret McCormick, and Jane McCormick, the other subscribing witnesses, respectively, subscribed their names as witnesses to this will, in the presence and at the request of the testatrix, and in the presence of each other.

Test: ED. N. ROACH, *Reg. Wills*

ORPHANS' COURT, *September* 11, 1860.

DISTRICT OF COLUMBIA, *Washington County:*

This day appeared Andrew McCormick, one of the subscribing witnesses to the aforegoing last will and testament of Anne R. Dermott, late of
46 Washington county, aforesaid, deceased, and made oath, on the Holy Evangels of Almighty God, that he did see the testatrix therein named sign and seal this will; that she published, pronounced, and declared the same to be her last will and testament; that at the time of so doing she was, to the best of his apprehension, of sound and disposing mind, memory, and understanding; and that he, together with Wm. R. Riley, W. L. Dixon, Margaret McCormick, and Jane McCormick, the other subscribing witnesses, respectively, subscribed their names as witnesses to this will, in the presence and at the request of the testatrix, and in the presence of each other.

Test: ED. N. ROACH, *Reg. Wills.*

ORPHANS' COURT, *September* 15, 1860.

DISTRICT OF COLUMBIA, *Washington County, to wit:*

This day appeared Samuel T. Wall, and made oath on the Holy Evangels of Almighty God that he is well acquainted the handwriting of W. L. Dixon, deceased, having often seen him write; verily believes the signature, "W. L. Dixon," signed to the within will, to be the proper handwriting of said W. L. Dixon, deceased.

Test: ED. N. ROACH, *Reg. Wills.*

47 DISTRICT OF COLUMBIA, *Washington County, to wit:*

I certify that the aforegoing, on pages one to sixteen, both inclusive, is a true copy from the original will of Anne Reed Dermott, deceased, filed and recorded in the office of the register of wills for Washington county, aforesaid, the following interlineations having been therein made before the signing of this certificate, to wit: the words, "regard to," in line 32 of page one; the words, "or may at any time accrue to me," in line 3 of page six; and the words, "line 23 on page 2, erasure, at the end of," in line 27 of page fourteen.

Witness my hand and seal of office, this eighteenth day of November, 1861.

MOSES KELLY, *Register of Wills.*

48 Z. J.—*Exhibit No.* 2.

The articles of agreement made on the twenty-second day of April, in the year one thousand eight hundred and fifty-one, between Zephaniah Jones, of the city of Washington, mason and house-builder, of the one part, and Ann R. Dermott, of the same city, of the other part, witnesseth: That mutually covenant and agree together, each with the other, in manner and form following—that is to say, that he, the said Jones, shall and will well and faithfully do, perform, and execute, in good, substantial, and workmanlike manner, and in a neat style of finish, such as is proper to the sort and kind of work in its various details, all and singular the houses, buildings, and work of every sort and kind of work in its various details, all and singular the houses, buildings, and work of every sort and kind described and specified in the schedule hereto annexed and marked A, and which, together with all its appendages and details, is to be taken and regarded as part and parcel of these articles of agreement being authenticated by the signatures of the said parties, and the attestations of the same witnesses as these present, comprehending all the work and labor of every sort necessary and proper for the pulling down and removal of the
49 houses and buildings standing on the lot referred to in the said schedule, and for the removal and clearing of all the old materials and rubbish,

and for the rebuilding and completion of the new houses and buildings to be erected on said lot according to the specifications of said schedule.

That he shall and will also procure and supply, or cause to be supplied and procured, all and singular the materials, implements, fixtures, matters and things requisite and proper for the execution of the said work in all its parts and details, and for the complete finish and fitting for use and occupation of all the houses and buildings, and the several apartments of the house and buildings, to be erected pursuant to the plan of the works described and specified in the said schedule; that the said work and works, and the several parcels and parts thereof, shall be executed, finished, and ready for use and occupation, and be delivered over, so finished, and ready, to the said Ann R. Dermott, at the time and times following, that is to say: the three stores described in said schedule as fronting on Market space, and the warehouse on 7th street, on or before the first day of October next, and all the residue of the said work on the first day, said works with all diligence and practicable expedition.

50 That the said Ann R. Dermott, in consideration of the covenants and agreements on the part and behalf of the said Jones to be performed and executed as aforesaid, and of the due performance and execution of the same, and in full payment and satisfaction for all the work and labor aforesaid, and for all the materials, implements, and fixtures, &c., to be by him procured and supplied as aforesaid, shall well and truly pay him the full and just sum of twenty-four thousand dollars, by the instalments and at the time and times following, that is to say: five thousand dollars on the first day of July next; the further sum of five thousand dollars on the first day of October next, the said stores and warehouse being then finished and ready for use and occupation, and delivered over as above mentioned and agreed on; and the residue of the said sum of twenty-four thousand dollars, to wit: fourteen thousand dollars on the first day January, A. D. 1860, with interest as follows, that is to say, four thousand dollars part thereof, shall bear interest from the first day of May next, and the residue from and after the complete execution, finish, and delivery of the said work on the first day of December next, and all such interest shall be paid quarter-yearly, that is to say, one-fourth part of the yearly interest shall

51 be paid at the expiration of every quarter of a year from and after the time when the same shall begin to run; that on the complete execution, finish, and delivery of the said work on the first day of December next, as aforesaid, she, the said Ann R. Dermott, shall give her bond to said Jones for the due payment of the said sum of fourteen thousand dollars, payable on the said first day of January, in the year 1860, and the interest, payable as aforesaid, and shall also give collateral security for the same in and by a deed of trust upon the property on which he has agreed to execute the works specified in said schedule, in which deed there shall be inserted, among the other matters usual and proper in such instruments, a clause empowering and requiring the trustee in such deed named to collect and receive from any tenant or tenants of the said premises every such portion or instalment of said interest as shall be and remain unpaid and in arrear for the space of twenty days after demand and refusal of the same; and as a still further security for the said sum of money and interest, that the same shall constitute and remain a good and valid lien on all the said property, according to the provisions of the act of Congress in such

52 case provided; but no such lien shall exist, or be or inure to the benefit of any person or persons whatsoever other than said Jones, his executors, administrators, under any pretence of work or labor done, or materials supplied by his procurement for the execution of his contract and agreement aforesaid; and he shall make all his contracts for such work, labor, and materials on his

own individual and personal account and credit, and so as to forfend all claims on the part of any person but himself to any lien or liens on said property.

In witness whereof, the parties aforesaid have hereto set their hands and seals the day and year aforesaid.

ZEPHANIAH JONES. [SEAL.]
ANNE R. DERMOTT. [SEAL.]

Witness:
WALTER JONES.
JOHN C. HARKNESS.

I hereby certify that I have carefully compared this copy with the original, and find it contract.

JOHN C. HARKNESS.

October 15th, 1851.

SCHED. A.

Specifications constituting the Schedule A, referred to in the aforegoing articles of agreement for the erection of certain brick buildings on lots numbered one and twelve, in square numbered 432, in the city of Washington, for Miss Ann Dermott.

Removals.—Every part of the old brick buildings to be removed, except the west wall, which forms the party wall of the adjoining house, and such of the stone foundations as are conformable to the accompanying plans; no portion of the old material, or manufactured portions of the old building, to be used again in the construction of the new buildings, except the brick foundation stone, the marble mantles, soapstone jambs, and backs to fireplaces, two grates, and such of the freestone windowsills as are perfect, to be used to the back windows.

Excavations.—The corner lot and the alley to be dug out to an average depth of 7:11 below the grade of the pavement, at the building line, south front, (provided the bottom of the sewer will admit of it,) to be so graded that the water from every part of the floor shall drain to the sewer; the excavations of the vaults and area to be made to conform with the grade of the cellar, so as that all shall drain to the sewer; the cellar under the warehouse to be dug out to an average depth of 7.10½ below the grade of the pavement, at the centre of the front, at the building line, and to be so graded as to drain the water to
54 the sewer. The area to the warehouse to be dug out 8 feet deep; trenches for the new foundations to be dug out 3 inches below the bottom of the cellars, all the earth to be carted from the premises, and all the offal from the old buildings also.

Brick work.—The dimensions, arrangements and number of brick walls are laid down upon the accompanying plans, which plans are to be regarded as a part of their written specifications, except in so far as said plans may be modified by their written specifications. The south and east walls of the corner house, to be 2 brick thick, up to the first floor of joist; the east wall from thence, up to the second floor of joist, 2 brick thick; from thence up to the square, as also the south wall, 1½ brick thick; the basement, south, and east wall, up to the granite water-table, to be faced with good red brick, of a uniform color, and from the water-table up to the cornice, to be faced with best quality Washington front brick, (or their equivalent,) laid in neat tucked joints, oiled and penciled. The main division wall to be 14 brick up to the first floor of joists; from thence up to the raising floor of joists, 1½ brick thick; the wall along the south side of the alley to be 18 inches thick, (and to project 4½ inches into the vault for the support of the arch,) as high as the first floor of joists; from thence
55 up to the second floor of joists, 14 inches thick; the walls on the west, above the skylight, to be 9 inches thick, faced with red brick, and finish-

ed with a plain four-course brick cornice; the cross-wall in the cellar, dividing the stores from the kitchen, to be 9 inches thick, starting from a 14-inch footing of 4 courses, and to finish even with the top of the first floor of joists. The east wall to be arched over the alley, as per drawing, to unite with the warehouse, and to finish the same as described. The west wall over the alley to be arched at the same height as the front; to be 9 inches thick, and to finish with a plain brick cornice, even with the third floor of joists; the main division wall to be arched over the alley, on 3 bars of iron, $2\frac{1}{2}$ in. x $\frac{3}{4}$, bent to suit the curved of the arch, and turned up at the ends to prevent spreading; the main west wall to be arched over the alley in the same manner, even with the ceiling of the second story, on two bars; all the chimneys and flues to be constructed upon the most approved plan to prevent smoking; the flues to be 14 x 14 in all, well pargetted and capable of being sweeped, to be taped out 3 feet above the cone of the roof; the swinging chimneys to be supported by trimmer arches laid on 4 iron bars to each, of 2 x $\frac{1}{2}$ inch, curved and lapped into the joist;
56 the fireplaces to be cased, and hearths laid with front bricks; the kitchen hearths to be laid of best paving brick, on very strong Susquehanna slate, bedded in cement on the top of the stone pavement, to be 2 feet wide from the buaist, and even length with the chimneys; the fireplace to be provided with a suitable iron crane and arch bar; the front cornice to be of full trimmed, moulded brick, to extend the entire lengths of the east and south fronts, with returns at each terminus, formed of cast iron. The brick work of the warehouse to commence for the outside wall even with the bottom of the first floor of joists; to be 18 inches thick up to the top of the second floor of joists, and from thence up to the square 14 inches thick; the first story to be so graduated as to keep the second floor on the same level with the second floor of the corner house, observing to set the top of the north sill 3 inches above the grade of the pavement; the front wall and the north and south walls, as far as the depth of the corner house goes, to be carried up the same height of the corner house; the rest of the south wall to finish even with the top of the fifth floor, with a plain four course cornice, and the north wall carried up 3 feet for the pitch of the roof, 9 in. thick; the dividing walls in the cellar, as shown on the plan,
57 to be 9 in. thick, starting from $14\frac{1}{2}$ footings, 4 courses high, and to finish with the top of the first floor of joists; $4\frac{1}{2}$ inch piers to be constructed, $2\frac{1}{2}$ brick long, on each side of the centre wall, directly under each iron column, with blue rock footings and caps; the chimneys and flues attached to the warehouse to be constructed and finished before described. The alley to be arched over from the building line to the west line of the corner lot; the arch to be 9 inches, laid in cement, to rise 1.8 inches, and to be placed as near the surface as is prudent; a communication to be formed, as shown on the plan, by 9-inch walls, with the back cellar of the warehouse. Two strong cast-iron curbs, 15 inches in diameter, to be firmly worked into the ceiling of the vault, and secured with strong wrought-iron gratings, made portable, and fastened on the inside with padlocks and chains. A coal slide to be constructed from the side of the alley into the back cellar of the warehouse, to be cased with even-faced blue rock, or N. York flagging, secured with wrought-iron gratings and padlocks and chains. Three vaults in the south pavement, to be 9.8 x 8.0 in the clear; the front side and division walls to be 9 inches thick; the back wall 14
58 inches thick; the arches to rise 18 inches, and to be 9 inches thick, brought up as near to the surface as is prudent; to be laid in cement mortar. Each vault to have a cast-iron curb firmly worked in the arch, with close cast-iron covers, fastened as before described. The backings of all the vaults to be of clay pudding. A drain to be constructed of brick, laid in cement, 18 inches wide on the bottom, open at the top, as deep as the sewer will allow, to pass from the space under the skylight along the division wall in the kitchen, under the floor, to the front area.

The area and vaults in the south pavement to be paved with the best quality paving brick, and so graded as to lead the water to the sewer. The cellars of both houses, and the vault under the valley, to be paved with stone similar to that used on Pennsylvania avenue, in coarse sand and gravel, sufficient to produce the grades required, and to be solidly rammed. The sewer to be extended and brought with an easy curve to the face of the area wall, directly under the front steps, and the mouth to be secured by a hinged iron grating. The space under the skylight to be paved with best paving brick, and graded so as to drain the water into the drain before described. A brick sewer, to be
59 laid in cement, 6 x 6 in the clear, from the privy to the front sewer; and that portion of the sewer which passes over the vault under the alley, to be of 6 in. cast-iron pipe, leaded at the joints to prevent leakage; a connecting drain to be brought from the back down-spout into this sewer.

A privy to be built on the west line of the warehouse lot, 18 ft. 6 inches long x 6.8 ft. broad, outside of the walls; the walls to be 9 inches thick, starting from blue rock footing 1.6 x 1.6, to be 18 feet high from the footings to the square, the roof to rise 9 inches. An additional privy of the dimensions of one of the divisions to be built one story high only. The privies to be connected with the warehouse by a similar wall and footings as described for the privy, to be of even height with the privy, and coped with brick laid in cement.

The back yard of the warehouse to be paved with stone. The alley to be repaved from the west line of the vault to the gutter at 7th street. The entire front line of east and south fronts to be paved with best quality paving brick on 6 inches of coarse sand brought to the right grade. Neat jack arches over all openings in walls, faced with red brick; dead arches turned whenever
60 necessary for strength. The north line of the lot behind the warehouse and the return to the privy to be enclosed by a brick wall 8 ft. 6 in. high from the bottom of the foundation to the top; to be 9 in. thick, with 14 in. footings 18 in. high, and coped with brick laid in cement.

A drain 6 x 6 in. to be made of brick laid in cement, to conduct to water from the area of the warehouse into the area of the corner house, (carried along against the east end of the vault under the alleys.) The west party wall to be built upon of its present thickness, and brought up to the height required by the plans. The gable peaks to be 9 inches thick, cut up under the slate, and finished with a two-course barge. Foundations to the front entrance steps put up in the best manner. The old brick to be properly cleaned, and such as are fit to make a good and substantial job to be used again; the balance necessary to complete the building to be of the best quality merchantable, all hard brick; no sammon to be allowed in any part of the buildings nor any of the dry pressed brick. The mortar to be made (except where cement is before specified) of the best quality wood-burnt Potomac lime and all sharp sand, in due proportions.

The contractor to furnish all the necessary scaffolding.

61 *Stone work.*—All the area walls to be built of best quality blue rock, laid in cement mortar, 18 inches thick, neatly faced and pointed, and brought to the true grade for the reception of the granite coping. The walls under the columns at the skylight to be 22 inches thick, laid in a cement mortar, and brought up to the proper height for the columns to set upon, having suitable stone immediately under each column. The footings for that portion of the walls which extends beyond the old walls to be laid in the best manner of blue rock, two feet thick and foot high. The footing for the division wall to be 22 in. thick and foot high. The footing of the wall along the south side of the alley to be 18 in. thick and one foot high. The walls of the cellar to the warehouse, on the south, west, and north, to be of blue rock, 22 inches thick up to the level of the joists, and the front wall up to the level of the cellar floor. The balance of the front wall of cellar to be of brick 22 inches thick. The

foundations to privies and connecting wall to be of blue rock laid in mortar, 18 inches high and 18 inches thick.

Granite work.—The window-sills to the basement, and all other parts
62 of the outside of the building, except for the fronts above the basement, to be of granite, 8 inches broad and 5 inches thick; the top face to be levelled clear through, and the bottom to be grooved for a water drip.

2 door-sills on the alley, south side	4. 7 long	12	× 8 in.
2 " " warehouse	5 0 "	15	× 8 "
1 " "	3. 4 "	12	× 8 "
2 south store front	6. 10 "	16	× 8 "
2 " " "	9. 0 "	16	× 8 "
2 " " "	6. 6 "	16	× 8 "
2 pieces water-table front	1. 7 "	8	× 6 "
2 door-sills, east "	6. 4 "	16	× 8 "
1 door sill, east "	6. 4 "	0	× 0 "
2 " warehouse front	6. 6 "	16	× 8 "
2 " " "	6. 0 "	16	× 8 "
2 pieces water-table, warehouse front	1. 0 "	8	× 6 "
2 platforms, south front	6. 4 "	5. 11	× 8 "
1 " " "	6. 0 "	5. 11	× 8 "
2 " warehouse	6. 6 "	5. 11	× 8 "
1 " under front steps, which can make two pieces	7. 6 "	5. 9	× 8 "

1 platform to front entrance ..... 8. 6 long, 5. 11 × 8, moulded.
7 winding steps to front entrance, the bottom one to have scroll ends ..... 5. 0 long, 8 in. rise.

9 straight steps, 5 feet clear of the wall, 13 in. wide, and 8 in. rise, ribbeted and rounded underside, and securely fastened to the wall. The front of
63 steps, as far as the windows extend, to have granite panels formed in the granite ashlar; the other two sides for the same distance to have plain granite ashlar; two granite columns, neatly cut, of the Tuscan order, with moulded caps and bars. The whole height, including caps and plinths, to be 9 feet, more or less, and of due proportions. The plinths to be 17 in. × 17 in. × 12 inches.

135 feet of coping to area walls	12 in. ×	8 in.
10 " " " quarter-circle, radius 6 ft.	12 ×	8
54 " water-table	8 ×	6
188 feet, lineal, of curbstone	1. 6 ×	6
9 privy door-sills	2. 9 ×	10 × 6 in.
3 spout stones	2. 6 ×	1. 4 × 6 "

The foregoing dimensions are the net sizes; consequently, on all the work requiring rests in the walls or rabbets, due allowance is to be made therefor, so as to render all the platforms and steps perfectly secure.

All the granite to be of the best quality Baltimore blue, and all the parts requiring it to be of the best quality fine work. The joints of the coping to be secured by iron clamps imbedded in lead. All the usual and necessary clamps and arches uniting the granite with the brick work to be done in a faithful manner.

64 *New York blue stone.*

1 door-sill,	4. 8 long,	15 in. broad,	× 5 thick.	}	Corner basement.
1 " "	6. 3 "	15 "	× 5 "		
1 " "	3. 6 "	15 "	× 5 "		
2 "	4. 8 × 12	"	× 5 "	}	Warehouse.
1 "	3. 6 × 10	"	× 5 "		
5 "	3. 3 × 10	"	× 4 "		Vaults.

The coal slide to be cased on the front and the two ends with N. York stone, 3 inches thick.

The old door-sill and step to be fitted up for a carriage step to main entrance.

Marble work.—All the front windows, except those in the basement, to have marble sills 5 x 8 in., made as described for the granite; the sills for the side-light windows to be 7 in. thick, and made in one piece. All the windows except the side-light ones to the fronts to have plain marble heads, 8 inches broad, 4 inches thick, and to extend 4½ inches on the brick work each side; the heads and sills to be made of the white marble as used at the Patent Office—best quality. Three new marble mantles to be selected by Miss Dermott, cost, when set complete, not to exceed fifty dollars each. The three old marble mantles to be put up again in the best manner. The front entrance sill 6. 4 long, 18 inches broad, and 8 inches thick, of the crystal marble.

65 *Iron work.*—The south store front and the west wall over the skylight to have girders of cast-iron of the same description as those used at Mr. Winder's building, omitting the top flange; the girders to the south front to have the bottom flange 13½ in. wide, and the girders at the skylight 9¼ wide.

The south front to have four cast-iron columns 8 inches diameter at the base, neatly fluted and with handsome caps. The girder at the skylight to be supported by four columns of the same description, 7 in. diameter. The store fronts on 7th street to be formed of neat and plain cast-iron posts and girders suited to 14½ walls, and conformable to the plan. A wrought-iron railing enclosing the balcony, and one cross inside division, and also two area granite platforms and front steps to be of the same style of that at Mr. George Parker's dwelling; the brackets to balcony to be of plain wrought-iron or ornamental castings as Miss Dermott may prefer; the posts to the area railing to be neat cast-iron 6 in. diameter, bolted to the coping.

The space left of the area to warehouse to be enclosed with a wrought-iron hinged grating similar to that used at Leonard Harbaugh's house, 7th street.

66 Six of the second-story windows north of the main entrance to have handsome cast-iron guards, similar to those in G R. Gather's house, 13th street; 4 cast-iron columns 7 in. diameter, and 4 *cast-iron columns 7 in. diameter,* and 4 do. 6 in. diameter, neatly cast as before described, to be used in the first and second stories of the warehouse. Three cast-iron curbs with close cast-iron covers, and two do. with wrought-iron gratings, to be worked in the arches of the vaults as before described; a wrought-iron grating to be made to the coal-slide, hinged on pivots, and fastened with padlock and chain; four superior irons 2 x 078, of suitable curve, and caps to be used to all the chimneys which are suspended upon trimmers; a wrought-iron grating to the mouth of sewer as before described. The tin spoutings brought to the pavements to have cast-iron terminations.

That portion of the sewer passing from the privies over the vault under the alley to be of 6-in. cast-iron pipe, caulked and leaded, with a branch connection with the back rain pipe; 80 wall irons to be used in connecting the walls; the floors to be distributed in the most judicious manner; snow-irons to be used to all the aves except to the tin roof. The straps and bolts to the gallows, and forming under the warehouse roof, to be of the usual size and description used for principal rafters. The two old parlor grates to be carefully

67 preserved, with the casings, and reset when the building is ready to receive them; and three new grates of such pattern as Miss Dermott shall select, the cost for each not to exceed twenty dollars. The returns to the brick cornice to be of cast-iron. The sliding-frame to dumb-waiter to be of wrought-iron of suitable dimensions, and sheaves and cords in a complete manner. The arch bars over the alley hung with described under the head brick work, to be of the best quality iron and regularly curved, rising the full breadth of the joists.

Two iron dowells to be used to each jamb of the door frames, having stone sills; and arch bar and crane provided for the kitchen fireplace, as before described.

The flues connected with the stores to have *to have* a sheet-iron door or slide made tight and hinged, or made portable, so that a sweep may enter and clean the chimneys. Iron holdfasts put to all the wood mantels.

Hardware.—The wrought or cut nails used to be the best quality. All the blinds to be hinged with Plant's best self-fastening parliaments, with sill-catches.

All the doors to be hung with best quality slip-buts to average $3\frac{1}{2}$ x $3\frac{1}{2}$,
68 and in all cases where necessary to be sufficiently broad to swing the door clear of the casings. The door locks in the basement and fifth stories to be of the quality cottage, or lock with best quality, dark mineral knobs, and bronzed furniture. The door locks in the second story to be best American mortise, with plated knobs and furniture. The third and fourth stories to have the same description of locks, with pearl knobs and plated furniture. The store door locks to be of the best quality usually used for stores. All the closets to have best spring and tumbler locks, and suitable bolts and hooks. All the vault doors to have best stock locks with brass bolts and keys. Best 2-inch axle pulleys to be used to all the box frames. The sashes to the box frames to be hung with round weights and best Russia sash-cords. The sliding doors to have brass railways and 6 in. sheaves; mortise locks and flush bolts where necessary. All the bolts and other fastenings usual to the doors and shutters to be of the best quality and most approved kinds. Best quality front door lock with stop to knob and night-key, plated knobs (and largest class furniture.)

69 *Plumber's work.*—One reservoir 10 feet long, 4.6 wide, and 3 feet deep, to be lined with lead, (3 lbs. to the superficial foot,) to be placed up to the ceiling of the fourth story of the warehouse immediately over the ladies' water closet, with a waste pipe of such dimensions as will insure it from an overflow. One other reservoir, 8 feet long, 4.6 wide, and three feet deep, to be lined with lead as before described, and provided with a suitable waste-pipe to prevent an overflow; from this reservoir the water is to be conducted into the kitchen with $\frac{1}{2}$-inch lead pipe, with a brass cock in the kitchen, third, fourth, and fifth stories, and to each a plain receiver or sink, with waste-pipes attached, conducting the water into the area under the skylight; the receivers to be lined with lead same as the reservoirs, to be 2 ft. long, 1.3 broad, and 4 in. deep; the sink or reservoir in the kitchen to be 3 ft. long, 1 3 broad, and 4 in. deep; the sink or reservoir in the kitchen to be 3 ft. long, 2 feet broad, and 6 in. deep.

Four water-closets, to be fitted up in the fourth story of the warehouse, in the most approved style, with self-acting seats; the soil-pipe to be of lead, 5 in. diameter, to pass from the ladies' closet down the southwest angle of the warehouse until reaches the level of the brick wall which connects the privies in the back yard with the warehouse, to pass along said wall over to the said
70 privies, to pass down the southwest angle of the privies low enough to pass under the seats, and along the seats, at an easy and safe inclination, to the northwest angle of the privies, and from thence down to the box below; lead funnel connections to be made from the four seats in the second-story privy to the soil-pipe. A slop closet to be constructed adjoining the ladies' water closet, and connected in the best manner with the soil pipe.

Bell-hanging.—Forty-two bells, to be secret, hung in zinc or copper tubes, the cranks to be so adjusted as to produce the best possible friction or strain on the wires. The pulls in the several stories to correspond with the style of furniture to door locks in the several stories. All the bells to be arranged upon a neat board fastened to the wall in the kitchen, and designated by painted numbers on or under each bell.

One speaking-tube, secreted within the plastering, to communicate between the dining-room and the kitchen, the tube to be made of tin of $\frac{3}{4}$ in. bore, with German silver or block-tin mouth-pieces at each end.

Tin-work.—All that portion of warehouse roof extending westward beyond the west line of the corner house to be covered with the best quality roofing tin, put on with upright grooves, and fastened securely to the sheathing.
71 The roof to the gentlemen's water-closet, and that portion of the roof covering the back stairs at the skylight, to be covered with the same description of tin. The framed wall of warehouse running above the tin roof to be covered with the same quality of tin, put on with flat joints. The back gutters to the eaves to be of the No. 1 class of tin gutters, made in the usual way, the pipes to be conducted to the reservoirs, and waste-pipes, of a corresponding size, to lead the waste water from each reservoir down to the yard.

Carpenter's work.—The joisting throughout the building to be of North Carolina timber; those of 1st and second floors of the warehouse to be 3 x 12, placed 14 inches from centres; the first floor of the corner house to be 2½ x 12, placed 14 inches from centres; all the rest to be 2½ x 12, placed 15 inches from centres; double joists, pinned together, to be placed under all plastered partitions which run parallel with the joists. All trimmers to be of double joist pinned together; the sleepers under the floors of the basement to be of 2 x 4 N. C., placed 20 in. apart. One row of double street bridging to be put to all the floors of joists except that portion west of the division wall between the turn of the corner house and the skylight, which portion, the joists being
72 long, and partitions across do., will require 2 rows.

The rafters to be 8 inches at the bottom, 5 inches at the top, and 3 inches thick, placed 20 inches from centres, secured by 2 x 4 tie and raising plates, all of N. C. The rafters for the tin roof over the warehouse to be of N. C., 3 x 4, and braced to the joists; the back wall of the fifth story over the warehouse to be framed of N. C., the studs to be 3 x 6, the posts 8 x 6, the braces 6 x 6, the girder 7 x 12, and plate 6 x 6, to be framed, braced, strapped, and bolted, upon the same principle as a principal rafter. All the sheathing to be of sound, well seasoned ¼ common white pine culls, laid in close joints. All the flooring to be of sound, well seasoned ⅝ mill-dressed N. C.; the basement to be all heart, the balance to be of a good merchantable quality, selecting the best for the boarding-house floors. All the partitions to be of ⅞ Eastern shore, or of hemlock, placed 16 in. from centres, and, in all cases where necessary for strength, to be framed and braced. All the wood lintels to be proportioned to the size of the openings, and none less than 4 inches thick, except over
73 the windows, 2 lights wide; the lintels over the main entrance and side-light windows to be of N. C., equal to the thickness of the walls.

Basement.—The walls and ceilings to the storeroom to be ceiled with white pine ¼ thick, ripped, dressed, tongue and grooved, and beaded—to be nailed on the walls; N. C. strips ⅝ thick and 3 inches wide, nailed into plugs, and placed 2 ft. from centres; the windows in the front to be 3 ft. 4½ wide, and 4.6 in. high in the clear; frames made of 2½ x 6 N. C. or white pine, with sash and shutter rabbets; the sash to be 6/4 thick, made in two folds, slights each fold, hinged with 2½ slip butts, and fastened with 6 in. square bolts; the shutters to be of 6/4 white pine, made square on the inside, and beaded, and flushed on the outside, hinged with Plant's best self-acting hinge, and fastened with a 6-in. sill-bolt, and a middle slip-bolt to each window. The jambs to be of ¾ white pine, splayed, 6/4 nosed seats. The door-frames to be made of 2½ x 8 N. C., ¾ splayed jambs. The door to the corner house to be 4.0 x 6.8, made in two folds, two thickness, with sash and portable shutters, made and fastened with the usual screw and stubb-bolts. The door in the west room to be made in two divisions, each 2.8 x 6.8, made in close bead, and flushed pannels of 6/4 white pine, and fastened with top and bottom wrought-iron bolts 10 in. long. A passage
74 to one of these doors, partitioned off with ⅝ flooring boards 10 ft. long and 4 ft. wide, for the use of the small store, with a strong step-ladder from do., and a suitable trap-door in the store floor. The outside kitchen to be 3.0 x

6.8, of $\frac{6}{4}$ white pine, single moulded, frame made as before described. Two neat flight of stairs, with mahogany rail, turned oak ballusters, and oak newels, to communicate, as per plan, with the main store. The openings shown on the plan of the kitchen in the division walls to be cased with $\frac{4}{4}$ beaded casings. The two openings leading into the space under the sky-light to have $\frac{8}{4}$ framed and sash doors, without shutters, to be 2.10 x 6.8 in the rabbet. A plain and substantial stairs, as per plan, to commence on the kitchen floor and to continue up through the several stories, as shown on the plan, to the fifth story; cherry hand-rail, plain ballusters, and turned newels whenever necessary; $\frac{5}{4}$ y. pine steps, $\frac{4}{4}$ risers, and plain mitred string. A dumb-waiter, to be formed of $\frac{5}{4}$ tongued and grooved boards, put up vertically, to be 3.6 x 3.6 in the clear, and to extend from the kitchen up to the fifth story of the building, the sides of the boarding next to the rooms to be stripped and lathed and plastered; communicating doors to be made to each story, and in the fifth story the boarding to terminate 2 ft. 6 in. above the floor, and enclosed at the top, with a $\frac{5}{8}$
75 folding battened door. The sliding frame to be made of iron, with a portable wooden tray to fit on do., and worked with judiciously arranged sheaves, cords, and cranks, put up complete.

A neat and substantial kitchen dresser, 8 feet long, the main shelf to be $2\frac{1}{2}$ feet wide, $\frac{6}{4}$ thick, of merch. white pine, and placed 2 ft. 8 in. above the floor; the space under the main shelf to be formed into two closets, with pannel doors to each; the space above to be divided by two shelves 1 foot wide. The wash-boards to be confined to the kitchen to be 6 in. wide, square-edged, put up after the plastering. The doors and windows to be trimmed with a 3-inch band moulding.

First story.—The south store fronts to be made according to the plan, of the best material and workmanship; the girders to be of cast-iron, and supported by cast-iron columns, as described under the head of iron work; the doors to be of two thicknesses, of $\frac{6}{4}$ merch't. white pine, with moulded portable shutters, and provided with best quality brass screw-bolts, iron lifts and stubb-bolts, 1 0 in. square bolts at the bottom, and spring and chain store door-bolts at the top; the sash frames to be made of $2\frac{1}{2}$ N. C., free from pitch, to be secured with $\frac{6}{4}$ moulded panel shutters, as described for the doors, to be trimmed with pilasters and cornice, as shown on the plan; the inside to be neatly cased with the usual bedded casings, fatias, and panelled soffeits, and enclosed on the inside
76 with $\frac{6}{4}$ sash doors, and divided into moderate size panes of glass, hinged and fastened with buttons, the usual bottom show-shelf to be put in each window. The east store front to have plain cast-iron posts and girders, with double cast store doors and shutters, put up as is usual to granite fronts; two doors on the alley communicating with the stores, to be 4.0 x 8.6 in the rabbets; frames to be of $2\frac{1}{2}$ N. C., and the doors to be made as described for the other store doors; one door to communicate with the kitchen stairs from the alley, to be 2.10 x 8.6, including the transom; the frame to be of $2\frac{1}{2}$ N. C., the door to be in 4 panels, bead and flush; one window, 12 lights, 8 x 10, to light the space under the sky-light; the frame to be solid, with sliding sash, made in two flight. The floor under the sky-light to stand clear of the brick wall at least 6 inches, and to be boarded up with all-heart N. C. $\frac{5}{4}$ board, dressed, tongued and grooved, secured at the top by a $\frac{3}{4}$ N. C. plate, grooved to receive the boarding. The sky-light sash to be framed of $2\frac{1}{2}$ N. C., divided as per plan, with bars one inch thick, with channels cut in the rabbet bed, thus: , to extend from the stair-way on the north to the return back wall of the front building, forming a valley at the turn, with a tongued and grooved joint, well painted with white lead;
77 the sash to decline two feet, and secured in a substantial manner at the top and bottom to prevent leaking. The walls at the sky-light to be secured and supported by cast-iron girder and columns as described under the head of iron work. The wash-boards to be 7 in. wide, of $\frac{4}{4}$ selects, put up

after the plastering, the trimmings to be a plain architrave. The partition dividing off the small west store to be of $\frac{5}{4}$ y. pine, dressed both sides, and tongued and grooved and beaded, put after the plastering.

Second story.—The front windows to be 15 light, 12 x 20 sash, double box frames of $\frac{6}{4}$ white pine, with the usual boxings for weights, and for the sliding of the sash above the frames, the back windows to be 12 light, 12 x 20, double box; the windows to have $\frac{8}{4}$ mortise blinds complete, to be trimmed with splayed jambs, opened faced $\frac{6}{4}$ pilasters, 8 in. wide, with moulded caps, plain bans, frieze and cornice, with broken bed moulds; the dining-room windows to have $\frac{6}{4}$ seats and open aprons, three sets of sliding doors, made and arranged with two divisions to slide and two swing on hinges, to be made as broad as the width of the room will allow, and of the same height as the windows; the doors to be $\frac{5}{4}$ thick, each fold divided into four panels, double moulded with handsome Grecian mouldings, the trimmings to be same as described for
78 the windows; the other doors to average 7.4 x 3.2, made in four panels, $\frac{8}{4}$ thick, double moulded and trimmed as before described; the jambs to be $\frac{8}{4}$ white pine in the stud partitions, and opened in the brick partitions. The front entrance to be a recessed doorway, finished in the same style as that of Mr. Lawrence's, on E street. The inside steps at the front entrance to be of best N. C., free from pitch, $1\frac{1}{2}$ thick rise, of $\frac{5}{4}$ yellow pine, to extend across the passage, and so arranged as to project as little as possible below the store ceiling. A handsome staircase, as per plan, to commence on this floor, and to continue up to the fifth story, the steps and risers to be of the best quality $\frac{5}{4}$ N. C.; open scroll brackets, ornamented fatias; oval mahogany hand rail; turned and moulded oak ballusters; moulded open-faced skirting; and the walls around the windows studded out with $\frac{3}{4}$ studs to a cornicircular form; the spand-rail to be single moulded, panelled, and a closet formed under the first flight of steps, and the windows to have a sash-door to do., 6.10 x 2.10, with a tramer over do. as large as can be used to look well. The closets at the end of the dining-room to have panel doors $\frac{6}{4}$, single-moulded, and made in folds, to be shelved in the usual way, arranged from 16 in. to 12 in. apart, starting from the
79 bottom shelf, $\frac{6}{4}$ thick and 18 in. wide, placed 3 feet above the floor, a suitable hinged sash to be put each closet, secured by a gauze wire covering. All the mantles required in this story, besides the marble ones specified, to be of a neat marble pattern, made of clear, well-seasoned white pine. The washboards to be 12 inches wide, including the moulding, opened on the top edge two inches, and the moulding two inches, and put up to grounds. The carpet sills and hearth borders to be of mahogany of the usual width. Three windows to Miss Dermott's rooms to have inside shutters in five folds, cut in three pieces; the wall to be studded to suit do.

Third story.—The windows to be 12 x 18, double box, 12 light, except those in the small rooms over the dining-room, which are to be 8 light, 10 x 18, made as before described, with blinds complete. The doors to be 7.2 x 3.0, double-moulded, $\frac{8}{4}$ thick, made in four panels; the jambs same as described for the second story; the trimmings of this story to be a 7-in. plain pilaster $\frac{4}{4}$ thick, moulded caps, plain bars, frieze and denstaled crown mouldings. The windows to have splayed $\frac{4}{4}$ jambs, $\frac{6}{4}$ moulded edge seats, and plain aprons; one set of sliding and folding doors made as before described, *and one set of sliding and folding doors made as before described*, and one set of folding doors to
80 be made the full width of the room, allowing for strong jambs, to which the doors are to be hinged, to be made in four folds, hinged together with 3 hinges, $\frac{4}{4}$, in the most substantial manner. All the doors in the back rooms to have transoms over do. 15 in. high, hung on pivots of hard wood. The mantles of this story to be made as described for the second story. The carpet sills and hearth borders to be of cherry; the washboards to be 11 inches wide, including the mouldings.

Fourth story.—The windows to be 12 lights, 12 x 16, made as before described; the small back windows to be 8 lights, 10 x 16; the doors to be 3 x 7, double-moulded, with plain jambs, as before described; the windows to have splayed $\frac{4}{4}$ jambs, $\frac{6}{4}$ moulded seats, and plain aprons; the doors over the back rooms to have transoms as before described. The trimming of this story to be a beaded casing 6 in. wide, frieze and neat crown moulding. The mantels to be of wood, of a neat, plain marble pattern. *The mantels to be of wood, of a neat, plain marble pattern.* The washboards to be 10 in. wide, moulded edge; the carpet sills and hearth borders to be of pine.

Fifth story.—The windows to be 12-light, 12 x 12, made as before described; the small windows on the back to be 8 light, 10 x 12; the doors to be
81 same as described for the fourth story; the washboards the same as fourth story; carpet sills and hearth borders of pine. A reservoir to be made of $\frac{8}{4}$ white pine, 8 feet wide, $\frac{4}{8}$ wide, and 3 feet deep, to be elevated up to the ceiling, to be secured by stanchions and flooring joist, with the usual strap and iron bolts at the angles and through the centres.

WAREHOUSE.

The cellar doors in the front to be 4.0 x 6.8, frames made of $2\frac{1}{2}$ N. C.; the doors $\frac{5}{4}$ N. C., dressed, tongued, and grooved, and beaded, hinged with two fort straps, and stock-locks with brass works. Two solid windows, 12 lights, 10 x 12, two do. in the back, 3.4 x 36, with $\frac{7}{8}$ round iron bars 6 in. from centres, the sash to do. to be made in two folds, and hinged with slip-butts, and fastened with 4-in. tow-bolts. One flight of strong, rough steps, $\frac{8}{4}$ y. pine, to communicate with the story above.

First story.—The store front to be of cast-iron, as described for the east store front, to the corner store, with sash doors made in the same manner. One door on the alley, and one on the back, 4.6 x 9.0 ft., made same as the other store doors, the frames to be of $2\frac{1}{2}$ N. C., with the customary fastenings for store
82 doors. Three windows, double box frames, 12 lights, 12 x 16 sash, with shutters, made, hinged, and fastened as described for the basement stores. A strong, rough stairs to extend up to the fourth story; the steps to be of $\frac{6}{4}$ N. C. with $\frac{4}{4}$ risers, dressed, and to run up in straight flights to each story; the first story steps to be 4 feet long, the second 3 ft. 3 long, and the third 3 ft. long, to have square newels and pine rails; the first flight to be boarded up underneath, with a buttoned door in do. leading to the cellar; two trap-doors to be formed in each of the floors framed, 5.0 x 5.0 with double joist trimmers; the doors to be framed of the flooring and hinged with strong T hinges. Corresponding well holes for stairs to be framed in each story south of the range of columns, and to be floored over; in case the warehouse should hereafter be divided into two stores, the well holes would be made for the stairs.

Second story.—The three windows in the front to correspond with the windows in the corner house, but no inside jambs or trimmings. Five windows, 12 lights, 12 x 16 sash, double box frames, but no inside finish; to have shutters same as first story. Every third joist of this floor to be long enough to pass through the south wall, to form a galley floor to extend from the corner house to the second story of gentlemen's water closet, to be framed into a joist at the
83 ends, so as to leave the floor 2 ft. 10 in. clear of the blinds. Two rows of 5 x 4 N. C. scantling to be let into the joist to nail the floor to, which is to be all heart N. C., $\frac{5}{4}$ thick joists painted with a white lead, and *and* the same description of galley floor to extend along the front of the closets, so that each may be entered from the galley. The entire length of the galley to be protected by slat-work left high; the frame to be made of $2\frac{1}{2}$ N. C. consisting of posts $2\frac{1}{2}$ x 4 in., placed 4 or $4\frac{1}{2}$ feet apart, as may be found most convenient, on the top of which to be framed $2\frac{1}{2}$ x 4 in., and a bottom rail 6 in. from the floor,

9 in. wide, of 2½ N. C., the spaces to be filled in with slats ⅞ thick edges, rounded and cut into the posts; the top of each part to have a stay by 2½ x 4½ N. C. strips let into the brick wall and wedged tight.

Third story.—The three front windows to correspond with those in the corner house, except no inside finish; five back windows, 12 lights, 12 x 18 sash, double box, without shutters, blinds, or inside finish.

Fourth story.—The three front windows to correspond with those in the
84 corner house, except no inside finish; five back windows, 12 lights, 12 x 16 sash, double box, without blinds or inside finish. The passage to the ladies' closets to be of ⅝ N. C., dressed, tongued, and grooved; four closets divided off as per plan, with ⅝ boards, dressed both sides, and tongue, and grooved, and a slop closet; each to have a panel door 6.6 x 2.4, hinged with 2½ butts, and fastened with a tour bolt 5 in. long; the seats of the closet to be made in the best manner, fitted to the plumber's work in a neat and substantial manner; the closets to be fitted with skirting and every other finish necessary for plastered walls; each closet to have a window of 3 lights, of 10 x 12 glass, the frames to be of ⅝ white pine, with 3-in. N. C. sills; a door to the passage to correspond with the fourth story doors in the corner house; the small windows to the water closets to have stationary blinds.

Fifth story.—Extends westward as far as the west line of the corner house; the centre passage from the corner house to be extended through the warehouse, and the space divided into four rooms, with 6 windows of the same size and finish as there is in the corner house; the wash-boards the same; the door to each room same as described for the corner house.

85 MISCELLANEOUS.

The tin roof over the warehouse to be covered with rough ⅝ N. C. boards, put 2 in. apart, and nailed to 1½ x 3 in. N. C. strips, placed 2 feet apart; fifteen posts, 5 x 5, dressed, and cornvive of N. C., to be firmly fastened to the roof for clothes-posts, each to have a round pin put through the post to fasten the line to, the posts to be 7 feet out of the roof; a platform to extend from the back door in the fifth story to the roof over the back part of the warehouse, to be made in a most substantial manner of N. C. joist and flooring, to be secured by strong rails and newels; the door which communicates with the platform to be 4 feet wide, made in two folds and same height as the other doors, the frame to be made of 2½ N. C., revealed, rabbeted, and beaded; the sills be of 4-inch. North Carolina.

The roof over the front of the warehouse and the return west end of the corner house to be sustained at the crown by a trussed gallows framing, starting from the rising floor of joists and up high enough to rest the top of the rafters on the top plate of the gallows; the top and bottom plates to be 3 x 12, and the posts and braces to be 3 x 8, all of N. C., framed and strapped in a substantial manner; the front balcony extending from the west line of the building across the south front and along the east
86 front, so as to enclose the window next to the main entrance, to be 3 feet 6 in. wide, making, as near as may be, 98½ ft. lineal of balcony floor, and 112½ feet lineal of iron railing to do.; the flooring to be all heart, ⅝ N. C., laid in beaded joists on 3 x 4 all heart N. C. rails, of 3 ranges, supported by plain wrought-iron beams, 19 in all, including the angular one, to be 2¼ x 1 in., and to run through the wall and fasten firmly to the joists on the inside; the under side of the floor to be neatly ceiled with ⅝ white pine, dressed, tongued, and grooved, and beaded; snow-finders to be put to all the eaves where the roof is slated; those on the front to be 7 in. wide, and the back 5 in. wide, of ⅝ white pine, sustained by the usual wrought-irons; corner beads to be put to all exposed plastered corners; all the joists of the warehouse exposed to view to have the lower edge faced and the sharp corner taken of.

Privies in the back yard, both stories, divided by $\frac{5}{4}$ dressed, tongued, and grooved board partitions; the seats and risers to be of $\frac{6}{4}$ white pine; those in second story to have margin casings and hinged flaps; skirting to be put such walls as are to be plastered, the soil-pipe, being brought down in the
87 corner of the south end, is to be covered by dressed casings; the floors to be of all heart N. C. $\frac{5}{8}$ mill dressed, laid on N. C. joists $2\frac{1}{2}$ x 8; the partitions in the second story will be one foot short of the ceiling and capped; a window of 8 light, 9 x 12 glass, to be put into the south division, second story, made in two flights to slide in the usual way, and a stationary blind on the outside; the doors to be 2.4 x 6.8, $\frac{6}{4}$ thick, made with bottom panels, the space above the bottom panels to be mortised slats, and hinged and fastened in the usual way; the boxes for the privies to be made of $\frac{6}{4}$ merchant. white pine, free from splits or sap, dressed on the inside, and on the front to form the riser, to be dovetailed at the angles and put together at the joints with white lead, to be two feet wide on the outside, two feet deep, and in length equal to the dimension of the two divisions; these boxes are to be set upon brickwork laid in cement, equal in breadth to the width of the boes, and so graded as that, by having two courses of brick above the floor on each side, the top of the seats may not be more than 18 inches above the flooring; the brick floor under the boxes is to be formed with a curve or dish grouted with cement, and made to decline to
88 the south and discharge itself into the drain before described; the box which receives the discharge from the soil-pipe to have the top edge of the eelr curved out so as to allow the water to run off into the drain below 4 inches under the seat; the roof to be $\frac{8}{4}$ culls, 6 in. at the eave, and 15 in. at the top, placed two feet apart, close sheathed for tin.

The 1st story door frames to be made of $\frac{8}{4}$ white pine, with granite sills and $\frac{4}{4}$ battened doors, each door to have a 4-in. dead lock in the south division; first story to have a 4-light window, 9 x 12, with blinds on the outside and the sash hinged in the inside; the doors and windows of both stories to be trimmed with a 3-inch band moulding, put up after the plastering; the seats of the first story to be made portable, so that the boxes can be cleaned out from the inside; five gates to be made for the alley fence wall, to be 3.4 in. in the clear and 7 feet high; the frames to be made of $2\frac{1}{2}$ N. C., to rest at the bottom on N. Y. stone blocks worked into the wall and secured by iron dowels and wall irons; the two inner jambs of the gate to be separated by an 18-inch pier, to which they are to be confined by two $\frac{3}{4}$-in. bolts and nuts; the gates to be made of $\frac{5}{4}$ N. C. dressed, &c., with two battens and braces, hinged with 22-in. straps, with hooks
89 made with plates and screwed to the jambs, one of the doors to have a stock lock with brass works, the other door leading to the privies to have a spring lock, constructed as to bolt itself when closed, and opened only by the keys of the privies.

The fence dividing the yard of the warehouse from the privies to be 6 feet high, boarded with good $\frac{4}{4}$ culls, tongued and grooved; the posts to be sawed to 3 x 5 inch, rough beaded fatia, and bare board to be put on each side of the boarding with wrought nails, the heads to be let into the posts. A cap to be put to fence of $\frac{8}{4}$ culls, jointed edges and bevelled top.

A girder of N. C., 5.6, dressed, to be put under the second and third floors of joists in the warehouse, on top of the iron columns, and to extend from the front to the rear of the building. The three doors to outside vaults to be of $\frac{5}{4}$ N. C., battened, dressed, tongued, and grooved, &c., hung with strap hinges, and a good 6-inch stock lock, with brass works to each door. The frames to be N. C., $2\frac{1}{2}$ x 7-inch, made 2.8 x 5.0 in the clear. The doors from the kitchen into the vault under the alley to be 2.8 x 5.10 square, worked $\frac{6}{4}$ thick, hinged and locked as before described; the jambs to be of $\frac{8}{4}$ white pine. The door inside of
90 the vault leading into the cellar to be a battened door, with frame, hinges, and lock complete.

A skylight to be constructed over the main staircase, according to the plan, to be framed with double outside rafters, 5 x 6 N. C. trimmers; the space from the rafters to the ceiling to be splayed upon each side and plastered; the sash to be made as described for the other skylights; the two ends to be made of perpendicular sash. Seven closets to be put up in the recesses of the chimneys, in the usual way, with doors to correspond with them in the rooms.

Plastering.—The fifth story of the warehouse, the passage to and the ladies' water-closets, the entire corner building, except the basement stories, the ceiling over the alley, and the gentlemen's water-closets, to be plastered in the best manner, in three coats, hard finish; the second and third stories to be set with calcined plaster, the balance finished with lime and fine white sand, wood beads to have quirks cut to do.; the plastering to the privies to be floated up with the white coat and sand, to give them a rough, hard surface; the mortar to be composed of well-slacked and wood-burnt Potomac lime, sharp sand, and hair in just proportions, warranted not to blister; the laths to be best quality, nailed on sufficiently far apart to insure a good key.

Painting and glazing.—The store fronts and the second and third story doors to be painted in the best manner in oil, imitation of oak or maple.

91 All the blinds to be painted 3 coats verdigris green. All the wood work usual to be painted. Both outside and inside to have 3 coats plain colors. The moulded washboards to be painted in two colors. All the wood mantles to be painted black and varnished. All the iron railings and gratings to be painted two coats black. The oak ballusters and hand-railing to be varnished three coats. The gallery and balcony floor to be oiled two coats. The brick cornice and frieze to the south and east fronts to be painted four coats plain white.

The glass for all the store fronts (except the inside glass to the show windows) and skylights, to be double thick, best quality cylinder glass. All the other glass to be No. 1 cylinder, free from stains, clouds and blisters; to be glazed in the best manner, and the front sashes to be painted of such colors as Miss Dermott may select.

Slating.—Foundation slate to be in all the walls whenever necessary, to prevent the damp affecting the plaster.

All the roof, except that portion described to be tin, to be covered in the best manner with best Susquehanna gauged slate, put on with copper nails.

92 All the flashings to the chimneys, valley gutters in the roof and behind the chimneys, flashings around each of the skylights, and the gutter on the south side of the skylight, over stairway, to be made of copper and put on in the most effectual manner.

In witness that the within specifications constitute the schedule (A) referred to in our articles of agreement of this date, we hereto subscribe our names this 22d April, A. D. 1857.

ZEPHANIAH JONES.
ANN R. DERMOTT.

Witness:
WALTER JONES.
JOHN C. HARKNESS.

93 In the supreme court of the District of Columbia, August 30, 1865.

ZEPHANIAH JONES, complainant,
against
HORACE STRINGFELLOW and OTHERS, defendants. } Equity 502.

The President of the United States to Horace Stringfellow, E. R Lippet, Joseph Pachard, William Pendleton, Clement Butler, Smith Pyne, J. W. French, Henry H. Bean, Sam'l Ridout, John A. Smith, David Saunders, John Saunders, Henry May, Charles Stott, Thomas Miller, Catherine F. Thompson, Robert James, Covington Smith, executrix of Rich'd Smith, deceased; Thomas Miller, executor of Walter Jones, deceased; Peter R. Hawley, Elizabeth Hawley, and other children of Wm. Hawley dec'd; Genetta Johnson, Sophia McCormick, John H. Ingle, adm'r de bonis non, &c., of Ann R. Dermott, dec'd; John H. Ingle and Osborn Ingle, executors of Job P. Ingle, dec'd; Wm. B. Hill and Catherine B. Hill, his wife; Robert S. Chew and Elizabeth R. Chew, his wife; Louisa B. Smith, John Carroll Brent, Catherine Smith, Geo. W. Tubman, and Mary E. Wilmer, executors of M. D. Tubman, dec'd; John R. Neirussa and J. C. Neilsor, John Garlinton, Richard Simpson, Hiram I. King, Elfriede Lanzberg, Richard W. Carter, S. M. Meyerberg, Maria Anderson, Robert James, Dade Hooe, Mary Hooe, and Lucy Daniel:

94 You are hereby commanded to appear in this court, at the first special term occurring twenty days after service of the subpœna, and answer the exigency of the bill, under pain of attachment, and such other process of contempt as the court shall award.

Witness D. K. Carter, *Chief Justice.*

[SEAL.] R. J. MEIGS, *Clerk.*

Memorandum: That the defendants are to enter their appearance in this suit in the clerk's office on or before the special term to which this writ is returnable, otherwise the bill may be taken for confessed.

Marshal's return, Aug. 31, 1865.

Sum'd John A. Smith, Charles Stott, Thomas Miller, Covington Smith, ex'x; Thomas Miller, ex'r, Genetta Johnson, Sophie McCormick, John H. Ingle, ad'r de bonis non, &c.; John H. Ingle and Osborne Ingle, ex'rs of Job P. Ingle; Robert S. Chew and Elizabeth R. Chew, his wife; Louisa B. Smith, John Carroll Brent, Catherine Smith, Hiram J. King, Elfriede Lanzberg, Richard W. Carter, S. M. Meyerberg. Non sunt the others.

D. S. GOODING, *Marshal.*

August 31st, 1865.

95 *Order pro confesso.—Filed Oct.* 3, '65.

ZEPHANIAH JONES
vs.
HORACE STRINGFELLOW *et al.* } 502 equity.

On motion of Messrs. Bradley and Davidge, solicitors for complainant, it appearing that the subpœna to answer was served upon the defendants, John A. Smith, Charles Stott, Thomas Miller, Covington Smith, Thomas Miller, ex'r of Walter Jones; Genetta Johnson, Sophie McCormick, John H. Ingle, adm'r d. b. n. c. t. a. of Ann R. Dermott; John H. Ingle and Osborn Ingle, ex'rs of John P. Ingle; Robert S. Chew and wife, Elizabeth R.; Louisa B. Smith, John Carroll Brent, Catherine Smith, Hiram J. King, Elfriede Lanzberg, Richard W. Carter, and S. M. Meyerberg, on the 31st of August, 1865, and that they have not entered their appearance; therefore, it is ordered that the bill be taken for confessed as against said defendants.

By the clerk.

96 *Answer of J. H. Ingle, adm'r, &c.—Filed Oct. 7, '65.*

The separate answer of John H. Ingle, admininistrator de bonis non of Ann R. Dermott, cum testamento annexo to the bill of complaint of Zephaniah Jones:

This respondent, saving and reserving all and every exception to the bill of complaint of Zephaniah Jones against him and others, by reason of the manifest and manifold inconsistencies and insufficiencies thereof, for answer unto so much thereof as is material, answering saith: That he admits the death of said Ann R. Dermott, and of the said John P. Ingle, the sole acting executor named in said will, and the qualifications of this respondent as administrator de bonis non cum testamento annexo, and also admits that the exhibit filed with said bill is a true copy as it purports to be.

This respondent also admits that he is informed and believes that the charitable uses and bequests set forth in said will are void, but while so admitting he refers the decision thereof to this honorable court.

97 This respondent also admits the execution by the said Anne R. Dermott of the various deeds of mortgage and trust set forth in said bill, but he does not admit that the amounts due thereon are correctly stated therein, and this respondent showeth that there is upon the records of Washington county an unreleased incumbrance from Anne R. Dermott to Richard Dement, recorded 15th May, 1846, in Lib. W. B. No. 122, fol. 264, &c.; and he insists that the said Dement or his proper representatives should be made parties to this cause.

This respondent also admits that the said Anne made a written contract with said complainant, and he presumes, but does not know, that Exhibit Z. J. No. 2 is a true copy thereof.

This respondent further showeth and avers that the prior bill in equity, filed by said complainant against said Anne, and which said bill is stated to be still pending, was instituted for a specific performance of said written contract on the part of said Anne R. Dermott, and for the payment of five thousand dollars claimed to be due at the filing thereof, and for general relief, all of

98 which matters are still pending and undetermined, as will more fully appear by the production of all the proceedings upon said bill, and which this respondent requires to be produced and filed in this cause according to the proffer thereof made in said bill.

This respondent admits the election made by said Jones, and insists that said election precluded the said Jones from proceeding at law save and except for the said sum of five thousand dollars and the bill for extra work. And this respondent avers that said prior bill in equity is for the same subject-matter as that claimed in this bill of complaint, both proceeding to claim the compensation due or claimed to be due to said Jones for and in respect to his execution of said written contract, with no other difference than that in the present bill, based on said pretended judgment, the said Jones claims to recover beyond said contract price, and as on a quantum meruit for the work done under and outside of said written contract. This respondent also avers that the same issues were

99 taken in said prior equity suit, and the proceedings in said prior equity suit were taken for the same purpose as in the bill of complaint to which this answer is filed. This respondent also avers that the said Anne appeared to said prior bill in equity and filed her answer thereto, and the said prior bill is still pending.

And this respondent is advised and insists that the pendency of said former suit in equity is a bar to the further maintenance of the bill of complaint to which this answer is filed, and he claims the same benefit of exception to the said bill of complaint by reason of the pendency of said former bill as if the pendency of said former bill had been relied upon and set forth in a plea in bar, and not by way of answer. This respondent, not waiving said matters of exception, for further answer unto said bill, saith that it is not true that the said

complainant fulfilled and performed the written contract, a copy of which, marked Z. J., Exhibit No. 2, is filed with said bill, save so far as the said Anne R. Dermott hindered and prevented him. On the contrary, this respondent
100 avers that said complainant utterly neglected and failed to provide sufficient foundations for the building described in said contract, and in consequence of said failure, and by reason of the marshy and soft character of the earth on which the said building was being erected by the said complainant, the walls or some portion thereof settled, cracked, and became greatly dilapidated, and caused great injury to said building so far as the same had been constructed, and the said complainant undertook to correct the effects of such settlement by taking down parts of said walls and reconstructing the same, but neglected and failed to furnish adequate foundations for the work of reconstruction, whereby the said building again settled in some parts thereof, and became cracked out of perpendicular in the particular of the wall fronting on Seventh street, or some parts thereof, and was otherwise dilapidated and ruinous so that the same was a nuisance and endangered the lives of persons passing on said Seventh street, and was wholly unsafe and unfit for use and occupation by reason of such neglect and failure. And this respondent further showeth that said complainant abandoned said building while the same was in the
101 unsafe and untenable condition aforesaid, and wholly failed to furnish all necessary things and do all necessary work to finish the said building and deliver the same to said Anne R. Dermott, fit for use and occupation, according to the force and effect of said written contract.

Your respondent further showeth that said Jones at first pretended that his failure to comply with the requirements of said contract was caused by latent defects in the soil on which said buildings were erected, and which being unknown to him, he could not justly be charged with the damages caused to said buildings thereby; but after the Supreme Court of the United States had decided in said action at law, that said Jones was responsible for any damages caused by such latent defects in the soil and for any delays consequent thereon, the said Jones then pretended that he was delayed, hindered, and prevented by the acts of said Anne R. Dermott from fulfilling his said contract in each and every particular, whereas this respondent avers that said Anne R. Dermott in no otherwise interfered, delayed, or hindered said Jones than by requesting
102 him to make a few trifling alterations, all of which he voluntarily consented to do, and did do without stipulating for an extension of time, and all of which alterations and extra work are particularly set forth in the bill of said Jones for extra work referred to and exhibited with said bill. Your respondent also avers that some deviations were also made from said contract and the specifications thereof at the instance and for the accommodation of said Jones, but your respondent is informed, believes, and charges that the real cause of the delay of said work and the failure to deliver the same finished and fit for use and occupation, as stipulated on his part in said contract, was the defective and insufficient foundations on which said building was erected, and the unskilful manner in which the said building was erected. This respondent further showeth and charges that by reason of the default of said Jones and his abandonment of said building as hereinbefore stated, the said Anne R. Dermott was compelled to employ other builders and agents to reconstruct and finish
103 the said building so as to make the same fit for use and occupation, and that the cost of reconstructing and finishing the same according to the plan of said contract was ten thousand one hundred dollars, which he claims to be justly chargeable against any claim the said Jones may appear to have in the premises. This respondent further showeth that by reason of the defaults and omissions of said Jones in the premises, the said Anne R. Dermott was deprived of and lost the use and rents of said building which she otherwise would have received for a long space of time, and amounting to a large sum of money, to

wit: the sum of forty-five hundred dollars, as your respondent charges, and which last sum he is advised ought also to be recouped and deducted from any sum of money which may appear due to said Jones. Your respondent is advised and charges that if it shall appear that said Jones is entitled to the estate of said testatrix, by reason of the damages aforesaid, that your respondent is entitled in equity to a decree for any balance that may be found due to this respondent on that account.

This respondent further showeth that the said Jones, in palpable viola-
104 tion of the election made by him to prosecute said suit at law for the October instalment payable under said contract, and the bill for extra work alone, as appears fully in the proceedings exhibited with said bill, did afterwards file an amended narr. claiming as upon a quantum meruit the full compensation at law for all the work done and materials furnished by him under said written contract, or under any variation thereof in any particular, and this respondent refers to the exceptions filed by him on the last trial of that cause to show the violations of the election aforesaid, and the indensible claims of said Jones to ignore and violate the provisions of said contract.

This respondent does not admit that said Jones has recovered any legal judgment against him in said action at law, and requires full record proof of such alleged judgment. But in case it shall appear that such judgment was obtained as pretended, then your respondent is advised and charges that said judgment is duly taken by a writ of error to the Supreme Court of the United
105 States, and the same ought not to be enforced in equity by said Jones, as plainly appears on the face of the record of said judgment. And your orator further showeth in bar of said bill of complaint that said alleged judgment was obtained in said action at law against this respondent as the personal representation of said Anne R. Dermott, and the same, if operative as a judgment, only binds such personal assets as may hereafter happen to be in the hands of this respondent as such executor, and the same is no lien at law or in equity against the real estate of said Anne. Nor is the said pretended judgment admissible in evidence in any way by the law of the land to effect said real estate.

This respondent further showeth that, if said Jones had, or now has, any claim as creditor to sell said real estate for the payment of his pretended claim, then said claim existed in full force at the death of said Anne R. Dermott, which happened on the 20th day of August, 1860, and the same is barred by the statute of limitations in such cases made and provided; and this respond-
106 ent insists and relies upon the said statute of limitations as a *as a* full and complete bar to the matters and things stated in said bill, or to any cause of action arising thereon to the complainant. And in relying on said statute of limitations this respondent showeth that more than three years, prior to the filing of this bill of complaint, have elapsed since the alleged cause of action of the complainant as stated in his said bill arose, and that said alleged causes of action, if any exist, (which is denied,) are by simple contract, and not otherwise.

This respondent avers that the said Anne R. Dermott duly executed to a certain Richard Dement, now deceased, a deed of trust on the real estate described in said bill, which deed was recorded on the 15th May, 1846, in Liber W. B., No. 122, fol. 264, &c.; and this respondent is advised and charges that the heirs-at-law of said Dement ought to be made parties to said bill.

This respondent admits that said real estate ought to be sold for the purpose of paying the debts of said Anne R. Dermott, and of satisfying the legacies and annuities mentioned in her last will, but he denies that said complainant
107 is a creditor of said Anne R. Dermott, or otherwise entitled to sell said real estate, and requires proof thereof. So far as the said bill of complaint may be considered as a creditor's bill for creditors of said Anne R. Dermott, other than said Jones, this respondent assents to such sale of said real

estate, and prays that he may be authorized, as executor of said will, or by decree be appointed trustee to sell said real estate, and apply the proceeds of the sale to the payment of all liens thereon, and of all just debts due by said Anne R. Dermott, and all legacies and annuities thereby bequeathed; but, in so assenting, this respondent does not mean to recognize the complainant as such creditor, or in any way entitled to participate in a creditor's suit for the sale of said real estate. Wherefore this respondent prays that the said bill, so far as it relies upon any claim on behalf of said Zephaniah Jones, may be dismissed.

ROBERT J. BRENT,
For Respondent.

108 DISTRICT OF COLUMBIA, *Washington County, to wit:*

Before the subscriber, a notary public in and for the county aforesaid, this 5th day of October, A. D. 1865, personally appeared John H. Ingle, the within respondent, and made oath in due form on the Holy Evangely of Almighty God that the facts stated in the within answer are true to the best of his knowledge and belief.

JOHN H. INGLE.

Subscribed and sworn to before me, this 5th day of October, 1865, at Washington city, D. C.

[SEAL.] JOHN F. CALLAN, *Notary Public.*

[5-cent revenue stamped.]

Answer of Maria S. Anderson et al.—Filed Oct. 9, 1865.

To the supreme court of the District of Columbia, in chancery:

The joint and several answers of Maria S. Anderson, Jane S. Farron, Susan W. Garlington and husband, John Garlington and Eliza L. Ballew, and of Benjamin S. James, on his own behalf, and as administrator of George S. James, deceased, his brother, children of John Stabo James, a deceased brother, to the bill of complaint of Zephaniah Jones, against them and others, in chancery exhibited.

These defendants, answering, say, that they believe *that they believe* that
109 they are the next of kin and heirs-at-law of Anne R. Dermott, deceased, and are advised and so charge that the devise in the will of the said Anne R. Dermott to the trustees named for the charity mentioned is illegal and void.

The defendants, further answering, state that as to the amount of indebtedness alleged in the bill to have been due and owing by the said Anne R. Dermott at the time of her death to the complainant they are unable to answer, but are willing and hereby consent to the payment of what is justly due the complainant, as well as the other creditors who hold specific liens upon the real state left by the said Anne R. Dermott.

These defendants also consent to the payment of all lawful legacies, and are advised and believe that the personal estate is insufficient for the purpose aforesaid, and consent to the sale of the real estate as prayed for.

And as in duty bound, etc.

JANE S. FARRON.
JOHN GARLINGTON.
SUSAN W. GARLINGTON.
BENJ. S. JAMES.
MARIA S. ANDERSON.
ELIZA L. BALLEW.

110 STATE OF SOUTH CAROLINA, *Laurens District:*

Before me, the subscriber, a notary public in and for the said district and State, personally came Maria S. Anderson, Jane S. Farron, Susan W. Garlington, John Garlington, Eliza L Ballew, and Benjamin S. James, whose names are signed to the foregoing answer, and made oath that the matters therein contained are true to the best of their knowledge and belief.

Witness my hand seal this 23d day of September A. D., 1865.

[SEAL.] JOHN WELLS SIMPSON, Jr.,
Not. Public and Magst. ex off.

Affidavit of Z. Jones for publication.—Filed Oct. 9, 1865.

JONES *vs.* STRINGFELLOW. } 502—In chancery.

In open court personally appeared this 3d day of October, 1865, Zephaniah Jones, the complainant in the above-entitled cause, and made oath in due form of law that his informed and verily believes that Horace Stringfellow, E. R. Lippett, Joseph Pachard, William Pendleton, Clement Butler, Smith Pyne, J. W. French, Henry H. Bean, Samuel Ridout, David Saunders, John Saunders, Henry May, Catherine F. Thompson, Robert James, Peter R.
111 Hawley, Elizabeth Hawley, William B. Hill, Catherine B. Hill, his wife; George W. Tubman and Mary E. Wilmer, executors of M. D. Tubman, deceased; John R. Neirnsee, J. C. Neilsor, John Garlington, Richard Simpson, Maria Anderson, Robert James, Dade Hooe, Marie Hooe, and Lucy Daniel, defendants in said cause and non-residents of the District of Columbia; and that the heirs-at-law of the late Ann R. Dermott, other than the said Maria Anderson, Robert James, Dade Hooe, Mary Hooe and Lucy Daniel, and such others as have appeared and answered in said cause are unknown to him and he is informed and verily believes are non-residents of said District.

Z. JONES.

Subscribed and sworn to before me, Oct. 9, 1865.

R. J. MEIGS, *Cl'k.*

Order of publication.—Filed October 9, 1865.

In the supreme court of the District of Columbia.

ZEPHANIA JONES, complainant,
vs

HORACE STRINGFELLOW, E. R. LIPPET, JOSEPH PACHARD, WILLIAM PENDLETON, Clement Butler, Smith Pyne, J. W. French, Henry H. Bean,
112 Samuel Ridout, David Saunders, John Saunders, Henry May, Catharine F. Thompson, Robert James, Peter R. Hawley, Elizabeth Hawley, William B. Hill and Catharine B. Hill, his wife; George W. Tubman and Mary E. Wilmer, executors of M. D. Tubman, deceased; John R. Neirnsee, J. C. Neilson, John Garlington, Richard Simpson, Maria Anderson, Robert James, Dade Hooe, Mary Hooe, and Lucy Daniel.—In Equity, No. 502.

The subpœna issued to compel the appearance of the above-named defendants having been returned into the clerk's office by the marshal, on the 31st of August, 1865, indorsed "not found," and the said defendants having failed to enter their appearance on the first rule day occurring twenty days afterwards, and the complainant having filed an affidavit that said defendants are non-residents of the District of Columbia, so that process cannot be served on them, it is, on motion, this 9th day of October, 1865, ordered by the court that said de-

fendants cause their appearance to be entered in this suit on or before the first Tuesday of January next, otherwise the bill may be taken for confessed.

113 And the bill alleging that the heirs-at-law of the late Anne R. Dermott, other than the above mentioned, are unknown, and the complainant having filed an affidavit that said heirs-at-law other than above mentioned, and such as have appeared in said suit, are unknown, and non-residents of the District of Columbia, it is further ordered, on said day, that said heirs at law appear in this court on or before the first Tuesday in January next, otherwise the bill may be taken for confessed; Provided, that a copy of the above order be published in the National Intelligencer at least two months before said day of appearance, and be continued therein for six successive weeks.

The object of the suit is to procure a decree for the sale of the real estate of the late Ann R. Dermott, situate at the corner of Market space, 27th street west, in Washington city, D. C., for the payment of debts due by her to the complainant and other creditors.

GEO. P. FISHER,
Jus. S. C., D. C.

114 *Order rescinding order of publication.*

JONES
vs. } 502, Ch'y.
STRINGFELLOW.

On motion, it is ordered that the order of publication filed in the above-entitled cause on the 9th of October, 1865, be, and the same is hereby, rescinded.

A. B. OLIN.

In the supreme court of the District of Columbia.

ZEPHANIA JONES, compl't,
vs.
HORACE STRINGFELLOW, E. R. LIPPETT, JOSEPH PACHARD, WILLIAM PENDLETON, Clement Butler, Smith Pyne, J. W. French, Henry H. Bean, Samuel Ridout, David Saunders, John Saunders, Henry May, Catharine F. Thompson, Robert James, Peter H. Hawley, Elizabeth Hawley, William B. Hill and Catharine B. Hill, his wife; George W. Tubman and Mary E. Wilmer, executors of M. D. Tubman, deceased; John R. Neirnsee, J. C. Neilser, John Garlington, and Richard Simpson.—In Equity, No. 502.

115 The subpœna issued to compel the appearance of the above-named defendants having been returned into the clerk's office by the marshal on the 31st of August, 1865, indorsed "not found," and the said defendants having failed to enter their appearance on the first rule day occurring twenty days afterward, and the complainant having filed an affidavit that said defendants are non-residents of the District of Columbia, so that process cannot be served on them, it is, on motion, this 14th day of October, 1865, ordered by the court that said defendants cause their appearance to be entered in this suit on or before the first Tuesday of March next, otherwise the bill may be taken for confessed.

And the complainant having filed an affidavit that the heirs at law of the late Ann R. Dermott other than such as have appeared in said suit are unknown and non-residents of the District of Columbia, it is further ordered on said day that said heirs-at-law appear in said suit on or before the first Tuesday of March next, otherwise the bill may be taken for confessed.

Provided a copy of this order be published in the National Intelligencer at least four months before said day of appearance and be continued therein

116 for six successive weeks. The object of the suit is to procure a decree for the sale of the real estate of the late Ann R. Dermott, situate at the corner of Market space and Seventh street west, Washington city, D. C., for the payment of debts due to the compl't and other creditors.

A. B. OLIN.

Answer of Jno. A. Smith.—Filed 16 *Oct.*, '65.

In the case of Zephaniah Jones *versus* Horace Stringfellow and others.

John A. Smith, one of said defendants to bill of complaint of said Zephaniah Jones, would respectfully state that he believes he was appointed by Anne R. Dermott, in her last will and testament, one of her executors, but that he declined to act as such, and never has in any manner been connected with her business, and therefore begs to be discharged from said suit.

JOHN A. SMITH.

Answer of J. H. and Osborne Ingle.—Filed 7 *Nov.*, '65.

The joint answer of John H. Ingle and Osborne Ingle, executors of John P. Ingle, to the bill of complaint of Zephaniah Jones.

These respondents, saving and reserving all and every exception to
117 the bill of complaint by reason of the manifold inconsistencies and insufficiencies thereof, for answer unto so much thereof as is material, saith that the auditor's report heretofore filed in the lifetime of their testator, John P. Ingle, in the case of said Jones against Ann R. Dermott, on the law side of this honorable court, will exhibit a full account of the administration of the personal estate of said Ann R. Dermott by the said John P. Ingle, and these respondents refer to said report as the only means they have of rendering such account; and these respondents further exhibit herewith, marked "J. H. I., and O. I.," a statement of the rents as received and expended by John P. Ingle as executor and trustee under the will of said Anne R. Dermott, and these respondents beg to be hence dismissed with costs.

R. J. BRENT, *for Deft's.*

District of Columbia, to wit:

Before the subscriber, a justice of the peace of the said district in and for Washington county, personally appeared John H. Ingle and Osburn Ingle, this 6th day of November, 1865, and severally made oath that the facts
118 stated in the aforesaid answer are *are* true to the best of their knowledge and belief.

Sworn before me.

JOHN F. CALLAN,
Notary Public.

Exhibit "J. H. I. & O. I."—Statement of receipts and expenditures on ac't of estate of A. R. Dermott, by J. P. Ingle, ex'or.

Am't rec'd for rents of Avenue House and stores		$10,764 77
Paid for taxes	$946 03	
insurance	310 01	
repairs	193 38	
legal expense	294 47	
Interest on mortgage debts and on ac't principal same.	9,660 00	
Balance due ex'or		640 12
	11,404 89	11,404 89

E. & O. E.

JOHN H. INGLE,
Ex'or of J. P. Ingle.

Order pro confesso.

WASHINGTON, *October*, 1865.

ZEPHANIAH JONES
vs.
HORACE STRINGFELLOW and OTHERS. } 502 equity.

119 On motion of the complainant, by his solicitors, Bradley and Davidge, that a decree pro confesso be conferred for default of answer against all the defendants who were served with process, except John A. Smith, it appearing that though process of subpœna to answer was served on Charles Stott, John A. Smith, Thomas Miller, Covington Smith, executors of Richard Smith; Thomas Miller, exr. of Walter Jones; Gennetta Johnson, Sophie McCormick, John H. Ingle, administrator d. b. n. c. t. a. of Ann R. Dermott; John H. Ingle and Osborne Ingle, exrs. of John P. Ingle; Robert S. Chew and wife, Elizabeth R.; Louisa B. Smith, John Carroll Brent, Catherine Smith, Hiram J. King, Elfrida Lanzberg, Richard W. Carter, and S. M. Meyersberg, yet that none of said parties, except John A. Smith, has duly answered the bill. Therefore it is ordered that the bill be taken for confessed as against said defendants for default of answer.

By the clerk.

Replication.—Filed 6 *M'ch*, '66.

JONES,
v.
STRINGFELLOW *et al.* }

The replication of Zephaniah Jones to the answers in the above-[illegible] cause:

This repliant, saving all manner of exception to said answers, says he will prove his bill to be true, certain, and sufficient in the law to be answered
120 unto, and that the said answers are uncertain, untrue, and insufficient to be replied unto by this repliant; without this that any other matter or thing whatsoever in said answers contained, material or effectual, in the law to be replied unto, confessed, and avoid, or denied is true.

All which matters and things this repliant is and will be ready to duly prove, and prays as in and by his said bill he has already prayed.

BRADLEY & DAVIDGE.

Proof of publication.—Filed 7 *M'ch*, '65.

OFFICE OF THE NATIONAL INTELLIGENCER,
Washington, March 6, 1866.

We hereby certify that the advertisement, of which the annexed is a true copy, was published in the National Intelligencer once a week for six successive weeks, commencing on the 16th day of October, 1865.

EDW. P. FLETCHER,
For SNOW, COYLE & CO.

Order pro confesso, March 7, 1866.

JONES,
v.
STRINGFELLOW. } 502 chancery.

The order of publication, heretofore passed in this cause, having been
121 published as required, and the defendants named therein having failed to appear and answer the bill of complainant, and the heirs-at-law of the late Ann R. Dermott, described in said order as unknown and non-resident, hav-

116 for six successive weeks. The object of the suit is to procure a decree for the sale of the real estate of the late Ann R. Dermott, situate at the corner of Market space and Seventh street west, Washington city, D. C., for the payment of debts due to the compl't and other creditors.

A. B. OLIN.

Answer of Jno. A. Smith.—Filed 16 *Oct.*, '65.

In the case of Zephaniah Jones *versus* Horace Stringfellow and others.

John A. Smith, one of said defendants to bill of complaint of said Zephaniah Jones, would respectfully state that he believes he was appointed by Anne R. Dermott, in her last will and testament, one of her executors, but that he declined to act as such, and never has in any manner been connected with her business, and therefore begs to be discharged from said suit.

JOHN A. SMITH.

Answer of J. H. and Osborne Ingle.—Filed 7 *Nov.*, '65.

The joint answer of John H. Ingle and Osborne Ingle, executors of John P. Ingle, to the bill of complaint of Zephaniah Jones.

These respondents, saving and reserving all and every exception to
117 the bill of complaint by reason of the manifold inconsistencies and insufficiencies thereof, for answer unto so much thereof as is material, saith that the auditor's report heretofore filed in the lifetime of their testator, John P. Ingle, in the case of said Jones against Ann R. Dermott, on the law side of this honorable court, will exhibit a full account of the administration of the personal estate of said Ann R. Dermott by the said John P. Ingle, and these respondents refer to said report as the only means they have of rendering such account; and these respondents further exhibit herewith, marked "J. H. I., and O. I.," a statement of the rents as received and expended by John P. Ingle as executor and trustee under the will of said Anne R. Dermott, and these respondents beg to be hence dismissed with costs.

R. J. BRENT, *for Deft's.*

District of Columbia, to wit:

Before the subscriber, a justice of the peace of the said district in and for Washington county, personally appeared John H. Ingle and Osburn Ingle, this 6th day of November, 1865, and severally made oath that the facts
118 stated in the aforesaid answer are *are* true to the best of their knowledge and belief.

Sworn before me.

JOHN F. CALLAN,
Notary Public.

Exhibit "J. H. I. & O. I."—Statement of receipts and expenditures on ac't of estate of A. R. Dermott, by J. P. Ingle, ex'or.

Am't rec'd for rents of Avenue House and stores		$10,764 77
Paid for taxes	$946 03	
insurance	310 01	
repairs	193 38	
legal expense	294 47	
Interest on mortgage debts and on ac't principal same	9,660 00	
Balance due ex'or		640 12
	11,404 89	11,404 89

E. & O. E.

JOHN H. INGLE,
Ex'or of J. P. Ingle.

Order pro confesso.

WASHINGTON, *October*, 1865.

ZEPHANIAH JONES
vs.
HORACE STRINGFELLOW and OTHERS. } 502 equity.

119 On motion of the complainant, by his solicitors, Bradley and Davidge, that a decree pro confesso be conferred for default of answer against all the defendants who were served with process, except John A. Smith, it appearing that though process of subpœna to answer was served on Charles Stott, John A. Smith, Thomas Miller, Covington Smith, executors of Richard Smith; Thomas Miller, exr. of Walter Jones; Gennetta Johnson, Sophie McCormick, John H. Ingle, administrator d. b. n. c. t. a. of Ann R. Dermott; John H. Ingle and Osborne Ingle, exrs. of John P. Ingle; Robert S. Chew and wife, Elizabeth R.; Louisa B. Smith, John Carroll Brent, Catherine Smith, Hiram J. King, Elfrida Lanzberg, Richard W. Carter, and S. M. Meyersberg, yet that none of said parties, except John A. Smith, has duly answered the bill. Therefore it is ordered that the bill be taken for confessed as against said defendants for default of answer.

By the clerk.

Replication.—Filed 6 *M'ch*, '66.

JONES,
v.
STRINGFELLOW *et al.* }

The replication of Zephaniah Jones to the answers in the above-entitled cause:

This repliant, saving all manner of exception to said answers, says he will prove his bill to be true, certain, and sufficient in the law to be answered
120 unto, and that the said answers are uncertain, untrue, and insufficient to be replied unto by this repliant; without this that any other matter or thing whatsoever in said answers contained, material or effectual, in the law to be replied unto, confessed, and avoid, or denied is true.

All which matters and things this repliant is and will be ready to duly prove, and prays as in and by his said bill he has already prayed.

BRADLEY & DAVIDGE.

Proof of publication.—Filed 7 *M'ch*, '65.

OFFICE OF THE NATIONAL INTELLIGENCER,
Washington, March 6, 1866.

We hereby certify that the advertisement, of which the annexed is a true copy, was published in the National Intelligencer once a week for six successive weeks, commencing on the 16th day of October, 1865.

EDW. P. FLETCHER,
For SNOW, COYLE & CO.

Order pro confesso, March 7, 1866.

JONES,
v.
STRINGFELLOW. } 502 chancery.

The order of publication, heretofore passed in this cause, having been
121 published as required, and the defendants named therein having failed to appear and answer the bill of complainant, and the heirs-at-law of the late Ann R. Dermott, described in said order as unknown and non-resident, hav-

ing also failed to appear and answer said bill, it is therefore, this 7th of March, 1866, ordered, adjudged, and decreed that said bill be, and the same is hereby, taken pro confesso against said named defendants and said heirs-at-law.

By order of the court.

Leave to withdraw original contract, &c., in equity 923.—*Filed* 9 *M'ch*,'66.

JONES, *v.* STRINGFELLOW, } 502 chancery.

On motion of W. D. Davidge, sol'r for compl't in the above-entitled cause, it is ordered that leave be and is hereby granted to withdraw the contract and specifications between the compl't and Ann R Dermott, filed as exhibits in the cause of Jones and Dermott, (923 Chancery Rules, No. 5,) for the purpose of proving the execution of said papers, and filing the same in the above-entitled cause as part of the testimony therein.

9th March, 1866.

By order of the court.

122 *Answer of J. C. Brent, trus.—Filed* 12 *M'ch*, '66.

To the supreme court of the District of Columbia, sitting in equity:

The answer of John C. Brent, trustee, to the bill of complaint of Zephaniah Jones, respectfully showeth that he admits that the deed of trust was executed to him as stated in said bill, but he denies that said complainant is a creditor of said Ann R. Dermott, or that he has established any title or claim as against the real estate of said Ann R. Dermott, and which is covered by said deed of trust to your orator, wherefore he prays that said bill of complaint may be dismissed with costs, &c.

ROBERT J. BRENT,
For Respondent.

In open court this day of March, 1866, personally appears J. Carroll Brent, the above respondent, and made oath on the Holy Evangely of Almighty God that the facts stated in the aforegoing answers are true to the best of his knowledge and belief.

R. J. MEIGS, *Cl'k., &c.*

123 In the supreme court of the District of Columbia.

ZEPHANIAH JONES *vs.* HORACE STRINGFELLOW and OTHERS. } No. 502—In chancery.

Testimony for complainant.

DISTRICT OF COLUMBIA, *County of Washington, ss:*

Be it remembered that, on this 14th day of March, in the year of our Lord one thousand eight hundred and sixty-six, I, Mahlon Ashford, an examiner in chancery, did cause to be personally present at my office, No. 2 Columbian College Law Building, in the city of Washington, in said District, John C. Harkness, Jonathan T. Walker, John H. Ingle, Z. Jones, Mathew G. Emmory, and Thomas Lewis, and Walter S. Cox, to testify on the part and behalf of the complainant in a certain cause now depending in the supreme court of the
124 District of Columbia, wherein Zephaniah Jones is complainant and Horace Stringfellow is defendant.

For deposition of Harkness, vide page 1
For deposition of Walker, vide page 14
For deposition of Ingle, vide page 19
For deposition of Jones, vide page 24
For deposition of Emery, vide page 37
For deposition of Lewis, vide page 42
For re-examination of Harkness, vide page 35
For re-examination of Ingle, vide page 40
For deposition of Cox, vide page 49

Deposition of John C. Harkness, for complainant.

And the said John C. Harkness, being about the age of sixty-one years, and being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, touching the matter at issue in said cause, I did carefully examine said John C. Harkness, and he did thereupon depose, testify, and say as follows, in answer to interrogatories put to him by W. D. Davidge, esq., solicitor for complainant:

"My name is John C. Harkness; I am in my sixty-first year. My occupation for the last twenty-five years has been that of architect and builder. I have resided all my life in the city of Washington, District of Columbia. I have examined the papers now shown me; one of them is the contract and the other is the specifications. [The papers referred to by the witness are marked respectively, M. A. No. 1, and M. A. No. 2, and hereto annexed.] The
126 contract and specifications were executed by Zephaniah Jones and the late Ann R. Dermott, on the 22d of April, 1851. I witnessed the execution thereof. The signature "John C. Harkness," annexed to the above papers, is in my handwriting, and was written by me immediately upon the execution of the papers by the parties.

Upon the execution of the papers, Jones, the complainant, entered upon the performance of the contract. He in the most faithful manner performed the work and supplied the materials mentioned and specified in the contract and specification. The relation that I sustained towards this work, from its commencement to its completion thereof, was that of draughtsman and superintendent for Miss Dermott. The plan of the building was Miss Dermott's own plan; she had made it a study for many years. The complainant received the five thousand dollars, payable by the terms of the contract on the 1st July, 1851, and that is all the money he received. He did not get the bond pro-
127 vided for by the contract and to be secured by a deed of trust. By the contract the stores and warehouse were to be completed and ready for use and occupation by the first of October, 1851, and the remaining portion of the building by the first of December following.

The work was not finished at the times agreed upon. The completion of the stores and warehouse was delayed by the frequent interferences of Miss Dermott against the earnest remonstrances of the complainant, she making demands for changes and extra work and materials beyond the requirements of the contract; and by serious delays on her part to have executed work on the buildings which she had reserved to be done under her own administration or by herself—work which was not embraced in the contract. I acted as the superintendent for Miss Dermott, and the complainant prosecuted the work with diligence and fidelity, and to my entire satisfaction; and but for the inter-
128 ferences of Miss Dermott, and her delay in doing what was reserved to herself, under the contract, the stores and warehouse would have been completed at the time agreed upon. The complainant invariably objected to all and every change or departure from the contract and specifications, and declared

that if he opened the door to those inovations upon the terms of the contract he never would be able to get it closed again. I have no doubt at all that the residue of the building would have been completed by the first of December, 1851, the time agreed upon, had the complainant been let alone. When I speak of the completion of the stores and warehouse and the rest of the building at the times prescribed, I assume that the sinking of the south wall of the warehouse and the wall fronting on 7th street, dependent upon said south wall, was caused by the interference of Miss Dermott, and her insisting that two stacks of chimneys, not called for by the contract, should be suspended on the south
129 wall of the warehouse, against the remonstrance of myself and the complainant. In my opinion the sinking was caused by the super-addition of the weight beyond the demands of the contract. From my knowledge of the character of the soil in that section of the city, I had frequently counselled Miss Dermott against too much confidence in its integrity, and at the time of her insisting upon these additional chimneys being attached to a wall required by the contract to be built to a height beyond precedent in that locality, I told her in these very words: "Miss Ann, you are running a very great risk; there must be a limit to the weight on that wall." She replied, with great emphasis, "The chimneys shall go on, and I will take the responsibility!"

The foundation and cellar were dug out in precise accordance with the
130 specifications, as near as it was possible for me to have them done. The surface of the cellars when dug out presented a reliable foundation, and proved adequate to support all the walls of the warehouse. The sinking took place at the intersection of that wall with the one on 7th street, and drew down about ten feet to the right, and ten feet to the left of the front wall on 7th street, which portion of the front wall on 7th street was dependant upon the south wall of the warehouse. This south wall of the warehouse is about eighty-five feet in length, and declined in its settlement so gradually from nothing at its western terminus, down to about four inches and one-half below its level at its intersection with the 7th street front wall, as to produce not the slightest crack or fissure in the said south wall of the warehouse.

From observations that I made from day to day, and continued for a
131 space of about two weeks, I discovered that the wall had ceased to sink any further, and believing it had reached a bearing, I directed the complainant to proceed and repair that portion of the front wall on 7th street, which had sunk with the south wall, as above stated, assuring him that he would be paid for so doing. The complainant declined to conform to my directions for some time; nor did he consent at all until I assured him that he was not, in my opinion, responsible for the sinking of the wall, and that he would be fully paid for the expense.

He, the complainant, then proceeded and rebuilt the front wall according to my directions. After the work was completed some weeks, the south wall of the warehouse showed signs of an additional settlement, remaining firm and unaltered at its western terminus, it declined or sunk in the same gradual
132 manner as before stated, without injuring or cracking the said south wall to the depth of some four inches below the point to which it had sunk before, making in all about eight inches and a half.

The first sinking or settlement took place about the middle of September, 1851. When the October instalment became due, the heads and sills of the front wall on 7th street, dependent upon the south wall, were cracked, and the sill of the door of the warehouse, next to the alley, was depressed below the level. When the October payment became due, Miss Dermott did not object to paying it on account of the sinking, but, on the contrary, declared that the settlement was less than she had apprehended from my cautions. Miss Dermott expressed to me her regrets at not being able to pay that October instalment, and said that she had endeavored to raise the money for Mr. Jones, but had

failed. That the money she had designed applying to said payment
133 had been invested in some stocks. I think she said Reading railroad stocks, which were at that time much lower than what she had paid for them; that she had endeavored to raise the money at the Bank of the Metropolis, by a deposit of these stocks as security, but that the bank had declined to advance her the money on this security, and she had no other resource.

She requested me to see the complainant, and to express to him her sincere regret at her failure, and to say to him that at the earliest possible moment when she could dispose of these stocks without loss, she would convert them into cash and pay him.

The paper now shown me by complainant's solicitor is a correct account of the extra work and materials furnished by complainant. It includes the cost of reparation made by complainant after the first sinking mentioned above, amounting to about $389. [Witness refers to printed paper marked M.
134 A. No. 3 and hereunto annexed.]

The buildings were delivered to Miss Ann R. Dermott early in the spring of 1852, and remained in her possession until her death.

Just before the delivery of the buildings I carefully examined the same, as her superintendent, and found them in all respects in conformity with the contract and specifications, except as respects damages by the settlement and the alterations which, in the progress of the work, she had insisted upon having made, and except, also, that the front steps were not completed, which was owing to her failure to obtain the consent of the corporation of the city of Washington to have them constructed six inches beyond the line prescribed by the building regulations. I told Miss Dermott when the plans were drawn that the steps protruded six inches beyond the building regulations, and sug-
135 gested another mode of construction which would obviate the difficulty; but she insisted upon the steps being constructed according to her own idea, and undertook to obtain the consent of the corporate authorities, but in that she failed. The granite steps were prepared according to the plans and specifications, and several of them set in place. At this juncture a notice was served upon Miss Dermott by the commissioner of the ward, stating that the steps could not be set beyond the line allowed by law; but the contractor for the steps (Mr. Emory) insisted on proceeding with his work, but consented to stop at my instance, acting under direct and earnest instructions from Miss Dermott.

NOTE.—The examination was here adjourned, to be continued on Thursday, the 15th day of March, A. D. 1866, of which the parties, by their solicitors, had notice.

M. ASHFORD, *Examiner.*

136 And then, to wit, on the said 15th day of March, 1866, came the complainant, by his solicitor, W. D. Davidge, and the defendants, John H. Ingle and Osbern Ingle, by their solictor, R. J. Brent, esq., when Mr. Brent stated that he desired to have noted his objection to so much of the testimony of the witness, John C. Harkness, as related to the plan of the buildings being the plan of Miss Dermott, which was done. Whereupon the cross-examination of said Harkness was proceeded with, and, in answer to questions put to him by Mr. Brent, he did testify and say as follows:

I know that Jones did not get the bond provided for by the contract, because Miss Dermott told me so herself. She stated that she had not given it because the walls of the building had settled, for which she said she considered the complainant responsible, and that the matter would be carried to
137 court. The condition of the building when the complainant left it, except the part thereof which had settled, which was a very limited

portion of the building, was in the condition called for by the contract and specifications.

I had no other authority from Miss Dermott in relation to the building, except to superintend the building and to see that the work was carried out according to the contract and specifications, which office conferred upon me the right or duty of rejecting all work and materials not agreeing with the contract or specifications.

I prepared the bill for extra work on the building for the parties interested, Miss Dermott having, at the time of the altering of the plans and extra work, assured the complainant that he should be well paid, and that I should make the estimate of the costs. I have not charged my memory with the exact amount of the estimate I made, but it will be shown by the paper referred to by me in my testimony-in-chief.

138 I have years ago given my deposition touching the matters at issue in the first or original chancery suit brought by the complainant against Miss Dermott in her lifetime. I was also examined as a witness in a trial at law at the February term of the supreme court of this District for 1865.

JOHN C. HARKNESS.

Sworn to and subscribed before me the 15th day of March, 1866.

M. A. ASHFORD, *Examiner*.

NOTE.—It was here agreed between Messrs. Brent and Davidge that a copy of the deposition of Jno. C. Harkness, the witness in the equity cause above referred to, might be filed in this cause, subject to the same objections as if the original were produced; and that a copy of the testimony referred to by witness, as given at February term, 1865, might also be filed in this cause, subject to all such objections as would attach if the reporter, Mr. Clephane, were to

139 appear and prove what the witness swore to on the aforesaid trial at law.

M. ASHFORD, *Examiner*.

Paper A.

JONES *vs.* DERMOTT.

FRIDAY, *March* 17, 1865.

John C. Harkness sworn for plaintiff.

Q. Where do you reside?

A. In Washington.

Q. What is your occupation?

A. It was originally a house builder; and of late years an architect.

Q. State, if you please, whether you know anything of the making of this contract between Mr. Jones and Mr. Dermott, and, as well as you can recollect, give us the history of your recollection of the making of that contract, not the terms of that contract.

Mr. Brent. What do you mean by the making of it?

140 Mr. Bradley. Whether he was present at the preparation, and who prepared it.

Mr. Brent. I object to your asking who prepared it.

Mr. Bradley. Permit me, Mr. Brent, to put the question in a different form.

Q. Were you present at the execution of that contract?

A. I was.

Q. And were you the subscribing witness?

A. I was.

Q. State, if you please, whether you have any knowledge of the plan and specifications referred to in that contract.

Mr. Brent. I object to the witness stating who prepared the plans and specifications.

(Objection overruled. Exception reserved. Witness directed to answer.)

A. I prepared the specifications.

Q. Mr. Harkness, please state whether you had any further connection with the work done or to be done by Mr. Jones under that contract with these plans and specifications.

141 A. I was the superintendent employed by Miss Dermott.

Q. For what purpose?

A. With the express undertaking that I was to see the plans and specifications carried out to the letter.

Q. By whom were you employed to make the plans and specifications?

(Objected to by Mr. Brent. Objection overruled. Exception taken.)

Witness directed to answer the question. Witness answers as follows:

A. By Miss Dermott.

Q. State how long your employment as superintendent continued after that contract was entered into; whether it expired before the completion of the work or not.

A. It continued throughout the execution of the work.

Q. State what opportunities you had during that time to see to the execution of the work under those plans and specifications.

A. I visited the work regularly from day to day as it progressed from the foundation up.

Q. State, as well as you can recollect, all the facts connected with

142 the digging out of that foundation, and whether Miss Dermott was present at any time, how often, and when.

(Objected to by Mr. Brent.)

Mr. Bradley withdrew the question for the present.

SATURDAY, *March* 18, 1865.

JONES *vs.* DERMOTT.

J. C. Harkness. Examination resumed:

Q. Mr. H., by the terms of this contract it is provided that a certain portion of the work was to have been completed by the 1st of October. State whether or not such portion of the work was completed by the time named.

A. The three stores on Market space, and the warehouse on 7th street, were to have been completed by the 1st of October, but they were not completed by that time, owing to the interference of Miss Dermott, in her departure from the original terms of the contract.

Q. By the terms of the contract the residue of the work was to have been completed by the 1st of December, state whether that portion of the work

143 was completed within that time?

A. It was not.

Q. State the reason.

A. I think the final completion of the work was also delayed by her interference.

Q. When was the building completed and delivered?

A. I think the stores and warehouse were delivered sometime in December, the early part, and the balance of the building in the April following.

Q. Was that the April after the contract was made?

A. Yes, sir.

Q. Was the building delivered over to her in a habitable condition, fit for use and occupation?

A. I went through the building and made an examination after Mr. Jones had concluded he had done all that was required of him, and I think two or three master-builders accompanied me—Mr. Barrens, and perhaps Mr. Davis.

Q. How long was that before the delivery to Miss Dermott?

A. I suppose it was immediately preceding the delivery of the keys.

144 Q. Please state now whether you found it in a habitable condition and fit for occupation?

A. I considered the Avenue House as having been executed in the most faithful manner, and also the warehouse, with the exception of the settlement of the south wall of warehouse, which had declined some eight inches, and which had the effect to destroy the squareness of one door and the window above it, on the southeast corner of the warehouse.

Q. Was there any exterior work to be done by that time which was not completed?

A. The front stone steps were not completed; that is, the steps at the main entrance to the Avenue House.

Q. Why were they not completed?

A. The plan for those steps required an encroachment of six inches beyond the line allowed by the corporation law, and was so understood by Miss Dermott when the drawings were made. She insisted upon having it so, believing, as she stated, that she could get permission from the corporation to allow them to be constructed as she desired. She made the application, but failed

145 to get the permit. She seemed not to be discouraged, however, and continued to delay the work until the permit could be obtained. Finally; Mr. Jones determined to wait no longer, and commenced to set the steps. He had the winders brought to the place, a platform laid across the alley, and probably two steps started, when Miss Dermott called on me, stating that she had been down to the building and found the men at work setting the steps; that she had begged Mr. Emory (the contractor) to desist, but he refused to acknowledge her authority, and then she appealed to me to go down and use my personal influence to prevent them being set, as she said the setting of them in that way, until she could get a permit, would, in all probability, involve her in a great difficulty. I went down immediately and arrested the further progress of the work.

Q. These steps were in this unfinished condition when the building was delivered?

A. Yes, sir.

146 Q. In regard to the drainage of those premises, state, if you please, whether or not the ground was so prepared as to effectually drain to the sewer mentioned in the contract?

A. There were two sewers. The former sewer was not graded sufficiently low to drain the cellar of the old building that stood there, and Miss Dermott told me she had got Mr. Coyle to grade her a sewer at great cost to herself, making it of the lowest possible grade, so as to drain into the canal. She pointed that out to me. There was a little area dug out on 7th street, which our old citizens will recollect stood there for many years. This sewer was brought into that short kind of an area on 7th street. She pointed that out to me as the sewer to which all the drainage must be carried, and from that point I was to estimate the elevation of the building, and the cellar floor, the store floor, the height of the basement—everything was to be graded from that point.

I took accurate levels of the bottom of that sewer, and specified the lowest

147 possible depth at which I could venture to grade the cellar. The system of drainage adopted by Miss Dermott was of two kinds, which I will state to you. In certain sections of our city we are troubled with water coming up, and that difficulty is to be provided against by some kind of drainage, either upon the surface or beneath. If it be on top of the surface, whatever founda-

tions you put to your floor, it has first got to be filled with water until it comes to the surface, and then to be carried off. That system she objected to, and then percolating drainage was resorted to, so that the earth itself, the cellar floor, should not be dug out level, as cellar floors are generally, but that starting from the bed of the sewer, it should ascend in every direction, from one extreme of the building to the other. In some places it would dish very rapidly, and in other places be a slight declination to that main depression. Then this inequality of the surface was brought up to a level by coarse sand and gravel,
148 and on that a stone pavement was laid, so that while a casual observer would not discover any drainage to the premises, there would be underneath that stone pavement a wooden floor, on top of which was arranged a complete system of drainage on natural principles—percolating drainage. The second system of drainage was that which provided for the surface drainage required. As you will see, the plan covered all of Miss Dermott's lot.

[The witness was here handed a diagram of the premises, by which he proceeded to explain to the jury this second system of drainage.]

Q. I will ask you whether or not the drainage was as effectual as it could be?

A. I have never seen more complete and effectual drainage than I saw during the period of the construction of the building up to the time of its delivery.

Q. Was there any well dug by Jones in that cellar?

A. No, sir.

Q. Did you see any occasion for it?

A. No, sir. The place was drained without any dry well in the manner
149 I have described.

Q. There was no other drainage than that you have described?

A. No, sir; none other could be had.

Q. Was that done under your direction as her superintendent?

A. It was.

Q. I understood you to say that the work done under that contract was well and efficiently done, and the materials good.

A. I have never seen a contract more faithfully carried out.

Q. Did you subsequently make a measurement of the extra work done on that building?

A. I did.

Q. Did you afterwards make a measurement, assisted by Mr. Morsell or some other person, and estimate the value of the building at the measurement price?

A. I did.

Q. The bills were presented at the last trial, were they not?

A. Yes, sir.

Mr. Bradley. We have them here, gentlemen, and will present them
150 to you at the proper time. The bill for extra work amounts to $1,136 23¼. They will be found on page 96 of the printed record. Who assisted you in that measurement? Mr. Morsell?

A. Mr. Morsell.

Q. Is he a professional measurer of works?

A. He is.

Q. You have testified that the work under this contract was delayed by the interference of Miss Dermott?

A. Yes, sir.

Q. State, if you please, whether or not the expense of completing that building was increased or diminished by these delays.

A. The work was increased, and of course the expense of the contractor was. The delays, too, forced him into a period of the year when it cost him a great deal more to execute what was not really extra work.

Q. Did he not have to do a great deal of plastering in the winter time, which occasioned the building of fires?

A. Yes, sir.

Q. It threw him, then, into the short days of winter; for, excepting the stores and warehouse, which were delivered in December, the work upon the
151 residue of the building was carried on during that winter and until April?

A. Yes, sir.

Q. Can you form any idea of what would be a reasonable allowance for this increased expenditure?

A. I do not know how I could arrive at that. The estimate or value of extra work, gentlemen, as all of you know, if you are builders, is not simply what may be charged for the extra work that affects builders. Very often I have found in my experience that the delay of a bricklayer for one day's work——

Mr. Brent. Do not speak of other cases.

Witness. Well, in regard to this particular case: when the basement walls were brought up to a level, the joist holes all cut in the house on the west side of the building, and some of them levelled up and the bricklayers gone, Miss Dermott came to me and begged that I would get Mr. Jones to raise that floor a foot higher, her object being to improve the basement stores on the
152 avenue. I saw Mr. Jones, and he peremptorily refused to make any changes from the contract. I so told Miss Dermott, but she was unwilling to yield the point.

Mr. Brent. What time was this?

Witness. Some time during the summer. I again called upon Mr. Jones and urged him to consent to accommodate Miss D. in this particular. He said, "If you once open the door to that woman you will never get it shut again."

I went to Mr. Walker, who had at that time become a co-partner and was superintending the work, and begged him to consent to this alteration, which he finally did; we then went to Mr. Jones and succeeded in prevailing upon him to take those joists off and bring the bricklayers, who had left sometime before and become engaged on other work, back again.

Mr. Langley, the sub-contractor, came with his men and added one foot to the top of the basement walls.

Mr. Walker then replaced the joists on the flat, and some of them upon the edge, levelling them again, and again cutting new joist holes on the left side of the
153 old building. When things were in this condition Miss D. came to me in great haste and said that she was disappointed as to the effect that that one additional foot would have on that floor, and begged that it might be lowered four inches. I told her I thought Mr. Jones would never consent to the alteration; she and I waited upon Mr. Jones at the building in regard to the matter, and he in the flattest and most emphatic manner said he would not consent to do as she requested, remarking that he could not be banded about in that way with his contract; she burst into tears, and said it was strange that she could not have the house built to suit herself, when she was willing to assume the responsibility, and to pay what was necessary. Mr. Jones left the premises, affected, I suppose, by the tears of Miss Dermott. Again I invoked the kinder feelings of Mr. Walker, and between us we consented to take the responsibility whether Mr. Jones would consent or not, and accordingly knocked off
154 two courses of brick and had the joists put down to that level.

In connection with this job, I might state, (though it occurred at a later period,) that the plan adopted by Miss Dermott was to have a platform and a door-sill as access to the stores 16 inches above the pavement. Having now raised this floor between 7 and 8 inches above the original grade, the question was as to how we were to have access to the floors to these stores by a small platform and door-sill; the addition of a step she would not have. We concluded to "steal a march" on the corporation, and I gave the grade to the pavement—the inclination—a little beyond that authorized by law, and raised the curb accordingly, so as to secure that mode of access to the stores.

Q. That was done under your direction as her superintendent?

A. Yes, sir; I fixed the grade myself.

Q. And required Mr. Jones to do the work?

A. Yes, sir; after we had got the curb nearly set a process was issued
155 against Mr. Jones, the contractor, for altering the grade of that street. The case was tried before Squire Grubb. I undertook the defence of Mr. Jones before that august tribunal, and summoned all the city authorities, not one of whom could show that there was any established grade in the city of Washington. Squire Grubb, however, had knowledge of the fact that we did alter the grade of the old curb, and therefore gave judgment against Mr. Jones, and fined him, although I proved by Mr. Coyle that it was a far better grade than the original one. We were delayed here again. Mr. Jones petitioned the council, but the chairman of the committee pocketed it and never reported. In that way he avoided the payment of the fine.

Q. What other delay, if any, did you experience?

A. The plan required a wooden girder across the main entrance at the ceiling of the second story, and Miss Dermott had insisted upon a level ceiling right through, without any girders showing below. Immediately over that passage or main entrance was a room. She had insisted upon having fourteen-inch fire-places all the way up in every room where she could get them. When
156 we were all ready for the second story brick work, I went to her and told her that if she did not allow this girder to drop below the ceiling line there was evident danger in case the back of the chimney should burn out, of her building being fired. She at once saw the force of what I said and approved of the substitution I suggested of an iron girder for the wooden one.

Q. In what respect did that delay the work?

A. We had to suspend that portion of the work with which we were just ready to proceed and wait until we could have an iron girder cast. I think we were delayed in the progress of the work about a week; but I cannot state positively how long.

Q. Do you recollect anything about the alteration of the folding-door?

A. There was a partition in the principal store on the east front, in which was a large folding-door, and when it was put up according to the plan and lathed eady for plastering, Miss Dermott, in visiting the building thought the space between the partition and the trimmings of the door adjacent to it in
157 the main passage-wall were too close, and desired the former to be removed in order to give this part of the building a more symmetrical shape. This partition was taken down and constructed anew in order to suit her amended ideas as to its position, which removal and reconstruction, of course, again occasioned delay.

Q. Do you recollect any delay occasioned as to the plumbers' and gas-fitters' work?

A. I recollect of delay as far as the work of the gas-fitter is concerned; but not any delay as regards the plumbers' work. Miss D., in the contract, reserved to herself the right to put in the gas-pipes, which work she delayed until the stores were lathed and second coated, and I think a large part of the house above lathed and rough coated.

Q. Were the pipes to be concealed or exposed?

A. To be concealed?

Q. Did her delay in having these pipes put in, necessitate the cutting out of the work which had been done?

A. They tore out, they said it was necessary, but it seemed to me to be most reckless, a large portion of lathing and plaster. Mr. Walker became so incensed with them in consequence that he would have kicked them out
158 of the building, and not allowed them to proceed at all, had I not interposed.

Q. Had not the plasterers been waiting some time for the gas-fitters?

A. Yes, sir; until they concluded they could wait no longer. Time was slipping through their fingers; and they finally determined to proceed, independent of the contractors.

Q. You spoke of a portion of the wall at the southeast corner of the warehouse having sunk some—state whether the work was delayed by the reparation of that part of the building?

A. After the building was all enclosed, the floors laid, and a great deal of the upper portion of the building lathed and roughed, we discovered that there was a yielding on the south wall of the warehouse. It showed itself altogether at 7th street. Its descent was exceedingly gradual—so much so as scarcely to be perceived, except on examination; but we found that it made progress, so that in the first week of October, when Miss Dermott called to see me with regard to a payment of $5,000 which she was unable to meet. On this setlement being mentioned during the conversation, she said to me that it had not
159 been anything like what she feared from what I had said guarding her against so great a building so near the avenue. Up to this time there had been no interruption in the progress of the work; but it continued to decline gradually, but almost imperceptibly, until it reached a depth of from 4 to 4½ inches at its eastern extremity, on 7th street, without moving a jot at its western terminus in the alley. It declined gradually from 0 to 4 inches at that time without producing the slightest crack, or revealing any defect or break in the entire south wall; nor is there to this day any defect perceptible. When it had reached what I supposed to be its ultimatum, four inches, it began to show ugly on 7th street, for the reason that there is an alley south of this great wall, and the front wall on 7th street, so far as it passes over the alley and attaches to that wall, is a dependence upon it, and the main wall upon which it depended declining four inches, of course that part of the wall from the south side of the alley to the north side declined in the same ratio, and looked badly. I
160 had made observations day by day as to the progress of this descent. For two weeks, from the point from which I levelled, I discovered that it made no progress at all. There it stood perfectly firm.

Mr. Brent. How many weeks did it stand?

Witness. Three weeks before the point at which I am going to bring you to. Discovering as I supposed that it had reached the lowest depth to which it would descend, and it looking badly, and complaints being made by some persons, I prevailed upon Mr. Jones to take out that front wall all the way up, and rebuild it. He did so, reconstructing the front wall all the way up. With the exception of that little slip, the wall was perfect, and is so to this day, and is a credit to any man who built it.

Q. This was done, you say, at your instance?

A. Yes, sir.

Q. And at whose expense?

A. Mr. Jones did it at his own expense, but at my instance. I told him it was now evident from Miss Dermott's disposition in the case that it——

Mr. Brent. Never mind that.

Mr. Bradley. Was she present?

161 Witness. She was not at that moment; but she called to see me personally about who was responsible for the rebuilding of that front wall, and I told her in these very words: "Miss Dermott, I am no lawyer. You have one retained for your service; and I want you to say to him that Mr. Zeph. Jones has done that work precisely, in every particular, according to the terms of his specifications and contract. The question of responsibility is not one for me to settle."

Q. Was she aware that it had been reconstructed at your instance?

A. Certainly; I told her so.

Q. That forms part, I understand, of the extra work?

A. Yes, sir; a portion of it.

Q. State the cause of the sinking of that portion of the wall.

A. I found, when I made my measurements, sometime in January, after he had reconstructed the wall, that it had declined about 4 inches again, making the whole descent about 8 and 8½ inches.

162 Mr. Bradley. I desire you to go back to the original foundation, and trace that cause up, telling us what passed at each interval from the time of laying the foundation to the time of the sinking.

A. When that cellar was dug out it revealed a perfectly safe and solid foundation, so far as human judgment could decide the case.

Q. State if any tests were applied, and if any, what?

A. We examined that foundation critically, probing it with crowbars. We discovered that there was a beautiful strata of virgin yellow clay covering the surface. Miss Dermott, who had been cautioned by me from building so large a house, was invited over to look at the foundation. She jeered me for my fears. I will add that we were congratulated by some of the best builders in the city of Washington, who—

Mr. Brent. I object to this evidence.

(Objection overruled. Exception taken.)

Examination by Mr. Davidge:

Q. You were proceeding to explain the cause of the sinking of the por-
163 tion of the building near the alley on 7th street. Perhaps you had better go back and repeat what you said in regard to the beginning of the foundations.

A. When the walls of the building were very far advanced we had occasion to get Miss Dermott over within the building to consult in reference to some matters, and to satisfy her as to the progress of the work, &c. While within the building she suggested that she must have additional chimneys on that south wall, about which we are now talking, and which didn't belong to the contract or specifications. I remarked to her "you may depend upon it, Miss Ann, that you may go a point beyond that of safety—that you may load that wall until it will not stand."

Mr. Brent. Was Mr. Jones present?

A. He was, and made the following reply: "I protest against putting an ounce more of weight upon that wall," refusing most emphatically to assume any responsibility if there were additional weights put upon that wall. His words were, "I protest against any more weight being put upon that wall."

164 Miss Dermott became very much excited, and lifting up her hands said, "they must go there, and I take the responsibility." Those were the very words she uttered with a great deal of vehemence.

Q. Were they put there?

A. They were, of course. After this declaration on her part, I had to see them put there; and on the identical part of the wall which did sink is suspended these identical chimneys about which I have been testifying.

Q. Now, state to the jury, from your long experience, your judgment as to the cause of the sinking of that wall?

A. I was bred up to the business of house building, and conducted it here for many years; and in regard to this matter I may say that but for this additional weight we should have had no trouble with this wall.

End of evidence as to the sinking of the wall.

Q. I do not think you have stated to the jury anything in regard to the delay caused by an alteration in the stairways?

A. No, sir; I was started off from that. There is a private stairway
165 in the rear of the Avenue House. Originally it run up clearing the alley

entirely. After reaching the upper story you passed from the head of the stairway through a little room which was over the alley, and through a door there with a short oblique platform, to the roof of the 4th story of the warehouse, arranged for drying clothes upon.

When we were putting on the upper story, Miss Dermott conceived that that room would be worth saving. She thought a plan might be contrived by which the same passage-way which had been used in making an ascent of the stairs, and cross it by a platform extending in an oblique direction, and thus this passage-way be turned into a room. She asked me to devise a plan for such change if it were possible. I did so, and submitted it to her. She approving of it, I arrested the brick work. We then had to wait for the blacksmith to make the iron fixtures rendered necessary by this change. And then again further delay was occasioned by all the frame work for this part
166 of the building having to be done over.

Q. I think, under the contract, Miss Dermott was to furnish the marble mantles, was she not?

A. Yes, sir. At least she was to make the selection. There was a stipulated price to be paid for them.

Q. State if there was any delay on her part in making these selections, and what efforts were made by Mr. Jones or yourself to prevail upon her to make such selections?

A. I do not know as I can give evidence on that point. I do not recollect of having any conversations with Miss Dermott herself on the subject, but I know that Mr. Jones frequently complained of her not making the selections. I have heard her claim the right to select these mantles, and heard her say she would not surrender her right to anybody; but whether she did or did not select them, I can not say.

Q. You were there, Mr. H., day after day: Did you observe whether the progress of the work was delayed by their not being there?

A. Yes, sir; the work was retarded by their not being there.

167 Q. Was any delay caused by a damper of any kind in the third story?

A. Yes, sir. When the walls of the third story were up, and we were about proceeding to the fourth story, we discovered that the wooden girder approached too near the jamb of the fireplace, rendering it dangerous for the damper. I reported that fact to Miss Dermott, and recommended an iron girder. She said, "Do so by all means; I would not have my house put in jeopardy for an iron girder." We then stopped the work again, and ordered the iron girder, which we had no conception of until we approximated the point.

Q. Do you know how long you were delayed in consequence of that?

A. I do not. I could not even approximate to it at this distant day.

Q. Mr. Harkness, you were superintending that work from the beginning to the end; you had occasion, and you were in duty bound, to mark the progress of the work; you saw Jones there, the force he had employed, and the diligence with which they worked. I wish now to ask you whether, but for
168 the delays occasioned by Miss Dermott, that building could and would have been completed within the time named in the contract?

A. I have no doubt on that subject. I feel confident, from the energy displayed by Mr. Jones and the number of hands at work, that had Miss Dermott adhered to the plans and specifications as she contracted for that he would have had that work completed within the time named in the contract.

Q. You have also described to the jury the apparently firm foundation of yellow clay disclosed when the foundations were dug out, the jeering of Miss Dermott, and the congratulations of master builders in the city. I wish you now to state whether you told Miss Dermott in detail the risk she would run

by proceeding to put any additional work upon that apparently firm foundation.

A. I knew there were evidences all over the city, and especially near the avenue, of their being in such places the bed of a river or lake. It was found to be so in the digging of wells, foundations, &c. The crust of clay covering it I knew to be thinner nearer the avenue than higher up. In my
169 neighborhood (New York avenue) it is twenty feet thick or more. I at first protested against her building her house so high; and when she proposed to put the additional weight I have described on the walls I said, "Madame, there must me some limit upon the weight to go upon those walls." She said, in a determined manner, "she would have those put there, and would take the responsibility." Mr. Jones then spoke up, and said he would not be be responsible for any additional weight placed upon the walls.

By a juror. Did that clay show itself over the whole surface of the foundation?

A. It appeared to be all alike. I could discover no distinction.

Cross-examination by Mr. Brent:

Q. You considered the building too high for the character of the soil on which it stood?

170 A. In getting up the plans I told Miss Dermott so distinctly.

Q. Did you tell Mr. Jones so when he undertook to do the work?

A. Mr. Jones was present on the occasion, and he also begged her to put on a wooden cornice instead of a brick one, because of its being lighter; and then it was that she said, "I am a good Jackson democrat, and I take the responsibility."

Q. Was this before or after the contract was signed?

A. Before.

Q. Mr. Jones signed it, then, with the knowledge or belief that the building was too high?

A. Yes, sir; I suppose so. He wanted to lighten it as much as possible, and he so told Miss Dermott.

Mr. Davidge. Everybody entertained doubts I suppose as to what weight that foundation would carry?

Witness. Yes, sir. We had seen evidences in the neighborhood.

Q. Don't you think the weight was increased by the putting on of these iron girders?

A. Yes, sir; but it was at a part where there was no probability of its
171 sinking. Our object was to guard against fire, and, with that view, the difference between a wooden and an iron girder would be altogether too small to take into consideration.

Mr. Brent. You did not know what portion of the building was going to sink.

Q. Have you any idea of how much they weighed?

A. I have not.

Q. Did not they weigh considerably more than the wooden girders?

A. Something more, of course.

Q. Will you please explain how it was that the south wall of that warehouse, which was a solid wall, could sink at the 7th street corner or end 8 inches and a half and not be cracked anywhere else?

[Witness described, by means of a diagram of the premises, the way in which it occurred.]

Q. Did you ever go and examine that foundation after this settlement took place to see whether it hadn't come down on blue mud?

A. I was there with a number of persons recently, searching for these crib

foundations that Mr. Niernse put in, and a tougher clay was scarcely
172 ever penetrated by the pick.

Q. Then you did not go down far enough to find any blue mud at all?

A. We went down to the bottom of the crib foundations—as far as he had gone. We found no marsh mud as far as we dug.

Q. How far did you bore the clay?

A. To the bottom of his trenches. He said he went down two feet.

Q. And you tell this jury that you never saw at any time after the settlement blue mud there?

A. I think it was in the summer of 1852 that Mr. Nantz was repairing there that I saw them bringing out from a well that they were digging under the avenue stores buckets of marsh mud.

Q. Did you go and examine that well to see how far down it had been dug?

A. No, sir; I did not go inside at all.

Q. Did you ever make an examination to see whether that yellow crust of clay was of very uneven thickness—in some places much thicker than in others?

A. No, sir. I made no such examination, because it would have been a fruitless one. I have generally found those deposits of the same thickness
173 throughout. If we found it of a certain thickness at one end we expected to find it of the same thickness at the other.

Q. Can you undertake to say whether that deposit of yellow clay was artificial or natural? That is, had been put there by human agency?

A. I am satisfied it was not there by human agency.

Q. You say that what she said about being a Jackson democrat and taking the responsibility was said at the time of the conversation about the chimneys?

A. Yes, sir.

Q. When Miss Dermott came to see you regarding the responsibility of the reconstruction of this wall, did you remind her at that time that she had in your presence assumed that responsibility? or did you simply refer her to her lawyer?

A. I told her what Mr. Jones had done, and then referred her to her lawyer as to the question of responsibility.

Q. Did you state in your former examination that the increased weight of this building—the addition of these chimneys—broke through the crust of yellow clay?

174 A. I do not know what words I used. I always used words intended to convey this idea: that that wall declined, depressing the earth on which it stood to the depth of from 0 at its southwest terminus to 8 inches or 8½ inches at its eastern terminus on 7th street. Whether the clay actually broke off or just yielded to the pressure, I do not know.

Q. Mr. H., if there were no marsh mud under that strata for the crust of yellow clay to break through, and the drainage was good up to the time Jones left it, can you tell me how a solid and thick stratum of yellow clay and a perfect drainage would have allowed of such a settlement as took place?

A. Why, sir, of course you can pile on weight that will carry down a clay foundation where there is a substratum beneath that is of a yielding substance like marsh mud.

Q. That assumes, Mr. Harkness, you will observe, that *that* there is a substratum of marsh mud below. I want to know if there be no substratum of marsh mud beneath, can you account for the sinking of such a building, with these chimneys, upon a solid clay foundation, and good drainage, in any
175 other way than by assuming that the stratum of yellow clay was not solid or thick enough to support the weight, but had to bend or give way in order to let it down into this marsh mud?

A. If there had been no marsh mud or yielding strata beneath, but, on the other hand, a solid clay foundation all the way down, you might have filled it up with water to the surface, and these walls would not have sunk.

Adjourned.

MONDAY, *March* 20, 1865.

176 John C. Harkness, cross-examination resumed.

By Mr. Brent:

Q. You say that these and the warehouse were not completed on the 1st of October, because of the interference of Miss Dermott. Will you specify what acts of interference on the part of Miss Dermott delayed the work?

A. To answer that question it will be necessary for me to recapitulate: First, the alteration of the floors; second, the substitution of three iron for wooden girders; third, the alteration to the stairway; fourth, the addition of two chimneys, not in the contract, which she demanded to be put there at her risk, and which caused the depression of the walls; fifth, her failure to introduce her gas pipes in due time. It was impossible to have the plastering or painting done until the gas pipes were put in.

In connection, I may add that there was another delay, caused by the stopping the walls to put in that balcony, so as to get on the roof in another direction from what was intended.

177 Q. Which wall was that?

A. The west wall of the Avenue House. It formed the eastern boundary to the skylight. Another cause of the delay in the finishing of the stores was this: Miss Dermott had required that those basement stores should be sealed (cei) with boards entirely dressed, grooved, and beaded; and when the boards were all prepared ready to be put up at any time, she discovered that the basement story being but 7 feet high, to put gas burners so near to the ceiling, as they were necessitated to be to pass under, that she could not without difficulty prevent them from taking fire. She then, at that late period, preferred to dispense with the board ceiling, and to go through the slow process of putting on plaster and waiting until it could dry.

There was another cause of delay, but I do not think it belongs properly to the finishing of the stores. I refer to the altering of the grade of the pavement. I think she would have consented to receive the stores without that being done.

178 Q. I understand you to say, then, that if the gas had been put in according to the plan, there would have been danger of the buildings being fired?

A. The matter of the gas was not mentioned in the plans or specifications at all. She was to arrange that herself, reserving the right to do so. Mr. Jones had nothing to do with it.

Q. Can you tell the date of that change?

A. I can not. The time was pretty nearly out when she put in her gas pipes.

Q. Do you mean by that the first of October or first of December?

A. The first of October. The plastering at the time was very far advanced in the stores, and in the upper part of the building was roughed to a very great extent.

Q. Well now, Mr. H., please turn to the bill having reference to the joists on the first floor, and specify which of those items related to the joists?

A. No. 1, to 1,440 ft. (sup.) of joists to front stores levelled up one foot above contract, by direction of Miss Dermott, and afterwards levelled and relevelled by her order, 1½ c., $21 60. No 2, to joist holes cut out one foot high, &c., $13 50. No. 3, to 3,300 brick laid in raising the store floor one foot, by direction of Miss Dermott, and by her direction taken off, 6c., $19 80.

179 Those are all relating to the store floors.

Mr. Brent. I make them foot up $54 90.

Q. How long do you consider to have been a reasonable time in which to have this alteration of which you have just spoken made?

A. Had this alteration been required before the workmen had left the place, it would have taken but a very little time to have laid 3,300 brick with the force

that was there, but Mr. Langley had squared up the walls and taken away all his workmen, and Mr. Walker had all those heavy N. C. timber joists laid on the walls, and quite a number levelled out when Miss Dermott called to insist upon having them elevated a foot. I cannot say at this distant day what length of time it took Mr. Jones to get Mr. Langley back, as he was off engaged on other work. I might venture an opinion, however, that it was at least a week before he got him back. The value I put upon this work was simply its intrinsic value, it not being my privilege as measurer to estimate these delays or damages to which the contractor was subjected.

180 Q. Where had Langley gone?

A. I do not know. He had large quantities of work on hand elsewhere.

Q. Were there any other bricklayers at that time engaged on the building?

A. No, sir. Mr. Langley had contracted to build the basement walls of that building for Mr. Jones, and that was to terminate his contract. He had completed his contract, with the exception of turning the vault over the alley, which he could not do until there was sufficient weight of wall to support the truss of that arch. The balance of the brick work Mr. Jones intended to go on with himself, which he did. If the alteration had not taken place, Mr. Jones, as soon as Mr. Jones had got his joists regulated, would have gone on with his own force immediately, and put up the balance of the wall without delay.

Q. If Miss Dermott had not arrested the progress of the work at this period, how long would it have taken Mr. Walker to have all these joists arranged in their proper places?

A. He would have had them done in three days.

Q. Then if she had not interfered, the bricklayers ought to have been

181 there at the end of three days?

A. Yes, sir.

Q. And when she did interfere it took a week to get them back?

A. Certainly, because they had gone off on other work, as I said.

Q. Was there no other part of the building on which the bricklayers could work?

A. No, sir; they could not go on until the joists were laid.

Q. When she proposed the alteration, and Mr. Walker agreed to have it made, why could not notice then have been given to the bricklayers to be ready in so many days, computing the time it would take to make the alteration?

A. It is a fact well known in house building, that when a contractor gets to work on a house, he cannot leave it always at his pleasure. Mr. Langley's obligations were as great at other points as at this one, and having entered on the discharge of his duty at other places where he had contracted to do work, he could not with propriety leave and come back to this place which had

182 been, by Miss Dermott's own interference, imposed upon him as an additional duty.

Q. Then if Mr. Langley had been engaged on other jobs which required him six months, there would have been six months' delay?

A. Of course, if Mr. Jones did not make some other arrangement.

Q. Were there no other bricklayers in Washington?

A. You cannot get one bricklayer to finish another one's contract.

Q. Do you know whether by Mr. Jones's contract Mr. Langley was allowed to go off and do other work?

A. Certainly; but he required him to put this up first, before he left him to go to other work.

Q. Mr. Jones is a bricklayer himself; didn't he have a force of his own?

A. Not then, but he had afterwards.

Q. Immediately after joists were ready to be put on, why could not he have gone on with this force of his own?

A. In order to expedite the work Mr. Jones had made the sub-contract with Mr. Langley to put it up earlier than he could do it.

Q. Was not Mr. Langley's contract finished when he prepared the
183 walls for the joists?

A. All to putting on the finishing touch after the joists were put over the alley. That we could not allow until there was an arch to support them.

Q. I understood you to say that Jones refused to make this alteration?

A. He did, sir, most positively.

Q. Who controlled the men?

A. Mr. Walker and myself. He never consented.

Q. Did he see Mr. Walker and you controlling his men?

A. Yes, sir; but he never gave his consent. He was opposed to "opening the door" to this woman, as he termed it.

Q. About what time was this?

A. In the early part of July or the latter part of June.

Q. How long had they been working there before this alteration took place?

A. They commenced to work under a contract previous to the one upon which the building was finished, which contemplating the incorporation of the old building which stood at the corner with the new extending over the lot, and having an attic story in that. They had proceeded to dismantle that old
184 building entirely, according to the contract, and had torn down quite a number of brick buildings that extended from the corner house up to the alley, and an old frame house that stood on the north side of the alley, and had begun to dig out the foundations when this second contract was made, which you will find dated in April. This was about the stage of the work when it was proposed to tear down the entire old building and to make the alley anew, using such parts of the old building as the contract allowed, so that they must have commenced to tear down probably in March.

Q. Had the brick work, walls, &c., been put up under the old or new contract?

A. Under the new entirely.

Q. How long were they engaged in laying the bricks up to the first floor?

A. I would not venture an opinion at this distant day.

Q. But it was after the date of the new contract?

A. They laid no brick before.

Q. Therefore, after the 22d of April?

A. Yes, sir.

Q. Where was the third iron girder?

185 A. [Witness repeated testimony given in chief on this point.]

Q. Who suggested this alteration of that third third iron girder?

A. It was a necessity which I discovered during the progress of the work.

Q. In other words, it was a defect in the specifications not to have called for an iron girder at this point?

A. I desire to remark in connection with that question that every detail, from the minutest to the greatest about that building passed under the strictest scrutiny and review of Miss Dermott, who claimed to have made that building her study for 15 years.

Mr. Brent. My question did not call for that, sir, I desire a direct answer to my question.

A. I will say, then, that the specifications could have been carried out and we could have made the building secure by the use of wooden girders as required by the contract upon bands across the alley, as required, and I will give my reasons.

186 In looking beyond the present use of the building, we supposed there might arise at some future day a condition in the jams and backs of those fireplaces, which, if neglected, would lead to the destruction of the

property, and to guard against a remote contingency, not an immediate one, it was thought best provide iron instead of wood.

Q. Please explain what you mean by a remote contingency.

A. I mean, in brief, that if the brick of the back of the chimneys burnt out, and they were neglected or not kept repaired, there would be danger of fire.

Q. Would you as an architect consider a building constructed in that way with wooden girders a safe and habitable building?

A. We considered it unsafe, looking to remote contingencies, and therefore substituted the iron girders.

Q. Will you point out the items in that bill of extras for the iron girders?

A. The first is, (on page 16,) 748 lbs. cast-iron girders, &c., $26 18.

187 The next, 645 lbs. of cast-iron girders, &c., $24 18¾. The third, 405 lbs. of cast-iron girders, &c., $15 69. The fourth, 1,027 lbs. of cast-iron girders, &c., $35 94½. Those are all for the girders.

Mr. Brent. That foots up $102.

Q. Had these wooden girders been got?

A. Yes, sir; they were all there.

Q. What was done with them?

A. I suppose they were chopped up and used about the building for different purposes.

Q. What would such wooden girders have cost?

A. The cost would depend on the length of them. I cannot now say what the length of these was. I suppose, however, they would have been worth from about $2 to $2½ a piece.

Q. Was any more danger to be apprehended from the fires at these points, than at other points in the building?

A. At the other points we had no need of putting girders at all. Where there is wood-work we never allow it if we can help it.

Q. There was then no wood-work in as dangerous proximity to the

188 fireplace as these girders would have been?

A. I think not.

Q. Mr. H., will you turn to the bill of extras for the stairway?

A. The first item is (page 15) 25 feet sup. of platform, &c., $5; second, 1 extra newel post, &c., $1; third, 5⅙ feet facias, &c., $1 44; fourth, 5⅙ mahogany, &c., $6 20; fifth, 175 ft. of stud partition, &c., $10 50; sixth, 202 ft. lineal of dressed ⅘ rails, &c., $16 16; seventh, 71½ feet (sup.) balcony frame, &c., $10 75; eight, 24½ ft. (lineal) of iron railing, &c., $56 16; ninth, 5 heavy wrought-iron brackets, &c., $22 50; tenth, 7⅞ ft. of extension of door-frame, &c., $1 68; eleventh, 3 lights, 11 x 23 sash, &c., $2 62½. Those are all, I believe, the extra charges connected with the stairway.

189 Mr. Brent. I make that foot up $134 03½.

Q. Mr. H., will you explain how the alteration of that staircase delayed the work on the rest of the building?

A. (Witness repeated the substance of testimony-in-chief on this point about her desire to save the little room in the upper story, by changing the course of the stairway, and the work having to be suspended in consequence.)

Q. How long was the work suspended?

A. Until we could get the iron brackets; I cannot tell the time.

Q. How many were there?

A. Five.

Q. Who made them?

A. That I cannot say.

Q. How large were they?

A. I suppose some six feet and upwards in length and 3¾ in thickness.

Q. Were they of cast-iron?

A. No, sir; of wrought-iron.

Q. Was the work delayed a week?

A. I should not think so long as that.

Q. Can you say whether it was four days, or not?

A. I cannot state the time.

190 Q. Can you say how long you were deliberating on the plan?

A. I do not suppose it took me over a day before I had the question settled in my own mind.

Q. Where was Mr. Jones all this time?

A. That it is hard for me to say at this distant day.

Q. Was he consulted about it?

A. I will repeat what I have before said, that Mr. Jones resisted every solitary change in the staircase and every where else.

Q. Whose workmen did this particular work?

A. I do not know who did the iron-work.

Q. Who paid for it?

A. I do not know as it has ever been paid for.

Q. With the exception of the gas-pipes, there was work done by nobody's hands but Mr. Jones's?

A. Not that I know of.

Q. Now we come to the two chimneys, which you say did the damage. Have you ever figured up the total amount of superadded weight caused by the addition of these two chimneys?

A. I spent a few moments this morning in doing so, but had not
191 sufficient time to arrive at a strictly accurate estimate. It could not, however, have been less than 20,000 lbs.

Q. Would you consider that hotel a safe one, when the walls, by the addition of 20,000 lbs., would sink?

A. I went through that building after it was completed, and was in there day in and day out during the progress of its construction, and I never felt the slightest apprehension with regard to its falling down. I have stated, however, from the beginning that I had repeatedly informed Miss Dermott that there was evidently in that section of the city evidence of the existence of the bed of a lake or river there, and it was possible to build upon that foundation a structure that would make that crust of earth over it yield, and produce a very serious settlement in her house. I stated this to her at the time she proposed to have these two additional chimneys, and with Mr. Jones protested against putting on this
192 additional weight, but she was determined upon having them, and said she would take the responsibility. Before the contract was signed, for fear of the soil not being as solid and firm as might be desired, Mr. Jones, in order to lighten the weight, wanted wooden cornices put on the building instead of stone cornices. She insisted on having the others, however, saying she was a good Jackson democrat, and would take the responsibility.

Q. Will you point out in the bill of particulars the extra work for the chimneys?

A. No, sir; they are not all there.

Q. Why not?

A. I have stated before that, in preparing the plans and specifications, Miss Dermott insisted, against my advice, in having full 14-inch chimneys upon the 9-inch west wall run parallel with 7th street, on those iron columns, cut to pieces as they were all the way up with windows. Nothing could induce her to depart from her demand for 14-inch chimneys, open fireplaces in each room, and flues all the way up. When we had that girder set and were ready to com-
193 mence on that wall and the chimneys, I went and demanded that she should come in person and see for herself, believing that if she could once see the condition of things she would forego what she contended for, and consent to have a single flue. I got her there, and after looking at it for some con-

siderable time and debating the question with me, she reluctantly consented to let it go; and finally (for she was tenacious of her interests) demanded, as a condition of Mr. Jones in surrendering the few bricks in those chimneys, that they should be put in these additional chimneys, and therefore no charge was made.

Q. Was Mr. Jones present when you sent for her to come?

A. He was.

Q. Was Mr. Jones in favor of putting up the 14-inch chimneys on the 9-inch wall?

A. He was not; he had protested against it before he signed the contract.

Q. Did not Mr. Jones, during the time Miss Dermott was at the build-
194 ing considering whether she would dispose with these 14-inch chimneys or not, urge her to relinquish that part of the contract?

A. Mr. Jones did nothing in the way of urging her at all.

Q. Was he perfectly silent?

A. He stood there witnessing what passed between us, but said nothing calculated to interrupt us.

Q. Then, as I understand you, she said to you, in the presence of Mr. Jones, that if he would put up these two chimneys in the 5th story that she would agree on that condition to give up the doing of the work called for in the specification in regard to the 14-inch chimneys?

A. She said no such thing; she used no "ifs" and "ands" at all. In consenting that the simple flue should be substituted for these large chimneys, she demanded these chimneys should be put on the walls, and in order that she might lose nothing, she demanded that the brick she regarded as surrendered might be used in them. As soon as she made that demand Mr. Jones protested, declaring that he would not put any more weight on that wall.

195 Q. You say she never said she did it on condition?

A. Certainly not.

Q. I understood you to say in your examination-in-chief that this wall gave way at the very point where these hanging chimneys were?

A. Oh, no, sir; I said the greatest depression was in that part of the building.

Q. How many feet west of the point of the greatest depression were these chimneys?

A. The first chimney was probably some four or five feet from the front, and the other, over on the other side, about 33 feet probably.

Q. Didn't the earth under that wall give way in the precise ratio that the wall itself did, the whole length?

The court. Mr. Brent, that is a self-evident proposition. Why do you ask that question?

Q. You say you dug down as far as the bottom of the crib, and found no marsh mud. I will now ask you if the effect of the pressure of a build-
196 ing acting upon a stratum of yellow clay be carry to carry down the yellow clay with it?

A. The part that is under the wall must necessarily go down with it, but in order for it to go down, as you cannot drive matter into matter, some other part of it must be raised up.

Q. Who were present when you made this examination?

A. I think Mr. Joseph Byran, Mr. Samuel Morsell, Mr. Matthew G. Emory, and Mr. Thomas Lewis.

Q. Who invited you to go down there?

A. Mr. Jones.

Q. Did any of you take a pick-axe?

A. When we got there we found a man at work there, picking away.

[Here a question was put about a license, &c., but Mr. Bradley objected, and it was withdrawn.]

Q. Describe this crib of which you have spoken.

A. At the bottom there was a timber that run at right angles with the wall—sawed timber, seven inches thick.

Q. Do you mean logs?

A. No, sir. Mr. Nancy calls them logs, but they are sawed timbers, seven inches thick. Then there were transverse timbers on the top of those.

197 We presumed they went through the wall as did the others, but whether they did or not, we could not say. Putting the two together made a breadth of about five feet, and on the top of these were flag stones of various sizes, generally covering this five feet of the wood work. The transverse pieces were the same as the cross pieces below.

Q. Did all come close together?

A. Yes, sir; the stone footing seemed to be just as you get it from the quarry and lay it down.

Q. Was any cement used?

A. I could not discover; there might have been.

Q. Mr. H., the effect of the timbers of that crib was to spread the foot of the walls, was it not?

A. Yes, sir; the design was to take on a broader space.

Q. And to distribute the pressure over a greater surface?

A. Yes, sir.

Q. By doing that, Mr. H., it increases the resistance to the pressure
197½ from above, does it not.

A. There is a slight difference between the wood foundations and the clay. If the crust of earth upon which that wall is built had been one foot thicker, there would have been no yielding. Now, when it is discovered that the crust of earth has yielded, bent beneath the pressure, to take two feet out of that crust of earth, bringing you in nearer proximity to the marsh beneath, it is a question of nice calculation as to whether the timbers put in under such circumstances are really any better than the clay foundation which it substituted.

Q. In point of fact, can you say whether that wall has ever settled since the crib was put there?

A. I have already stated that my measurements were made as to the utmost declination of that wall in the winter, probably the latter part of December, that it was not touched by Mr. Nancy in July, and that it had never yielded a particle from that day to the present time. There it stands at this time, from 8 to 8½ inches in declination.

198 Q. Mr. H., when this wall sunk 4½ inches, why did you think it had obtained its maximum?

A. Because I had unmistakable signs that it had stopped.

Q. What do you mean by unmistakable signs?

A. Why I demonstrated by levelling, and then I waited two or three weeks and found it proceeded no further; therefore concluded it had reached its maximum.

Q. In that opinion you found you were mistaken?

A. Yes, sir.

Q. Don't you think you might be equally mistaken in supposing it never would have settled any more but for this crib?

A. I think, from the tests to which it was subjected during the winter and spring, (and spring is the worst trial upon any building,) that it, having withstood all that winter, spring, and summer, without yielding a particle, it is conclusive evidence that it has reached its utmost declination.

Q. Do you know whether those foundations were not in a very miry condition the spring, at the time he gave the building up?

199 A. It was in April, I think, when he gave it up, and I did not enter the premises after that.

Q. Mr. H., we come now to the delay in the gas pipes; will you turn to the part of the specifications relating to gas pipes?

A. You will find nothing about gas pipes there; it was understood Miss Dermott was to have the right of putting those in, but the contract does not refer to them at all.

Q. Have you any knowledge of Mr. Jones calling on her to have the gas pipes laid before he did the plastering?

A. I have no personal knowledge at all; I know that he complained very bitterly, that is all.

Q. Who fixed the gas pipes?

A. I think Thompson & Bro.

Q. Can you turn to the bill of particulars and give us the charge for damage caused by the tearing away of the lathing, &c., to enable the gas pipes to be put in?

A. "To sundry repairs to plastering and lathing occasioned by the insertion of gas pipes," $25 00.

Q. Did the insertion of those pipes have any effect in delaying the work on the residue of the building?

200 A. Certainly; you cannot work plaster up without waiting until it dries; it also delayed the carpenters and painters.

Q. You mean delayed the carpenter's and painter's work in the room where the plaster was?

A. Yes, sir.

Mr. Bradley. As I understood gas was put in all over the house.

Witness. Yes, sir.

Q. How much delay did the lathing and plastering of the ceiling of these two basement stores, instead of putting woodwork on, cause?

A. A delay of about two weeks.

Q. Show me in that extra bill those items.

A. We did not allow any charge because he saved his planks.

Q. How did the lathing and plastering of the ceiling of the two basement stores affect a delay in regard to the work on the rest of the building?

A. There were other parts of the building about which they could work, of course, but it necessarily delayed the completion of the stores.

Q. In other words the two basements to the *to the* stores could not be
201 finished until they were plastered and lathed?

A. Its effect was felt upon the general completion of the work.

Q. How?

A. In the final completion of the work, all these accumulated extra jobs postponed the final completion of the whole job.

Q. You have mentioned all the extra items, I believe?

A. No, sir, not by a good deal; I have only spoken of those that delayed the completion of the stores; there are many others that delayed the work on other parts of the building. She required the west wall of the Avenue House to be battened, lathed and plastered, instead of having it plastered on the naked wall; that alteration was proposed at a late period, and of course, added to the workmanship, and not only so, but it took more time for the plaster to dry on the lath work than if it had been put on the naked wall.

Q. Did Mr. Jones consent to this change?

A. In the same way that he did to the others.

Q. How much more time did that take?

A. That I could not say positively, but it took a week, certainly, for
202 the plastering to dry the first coat.

Q. If you had plastered on the naked wall, how long would it have taken to dry?

A. There is a week's difference between the two.

Mr. Bradley. Would not the season have something to do with it also?

A. Yes, sir; you could not dry the first coating of plaster on laths in a week late in the fall; in the summer time you could.

By Mr. Brent:

Q. When was this done?

A. Late in the fall; in the latter part of October or in November.

Q. Turn to the items for that extra work.

A. First, (page 15, middle of page,) 1-187 ft. (sup.) battening to west wall, &c., $41 54¾. Second, 209½ ft. (lineal,) of small jamb casings, &c., $9 42¾. That is all that relates to battening.

Mr. Brent. That foots up a little over $50 00.

Q. Are there any other extra items?

A. Oh, yes, sir. After the house had been lathed and plastered there
203 were some 26 doors over which she required extra transoms, and after-
we had proceeded thus far, having all the doors trimmed also, we had to add on jambs and cut out the studding and lathing in order to get in these transoms. The first item for that you will find on page 15: "To 40 ft. (sup.) of open and rabbeted door jambs, &c., $14 00. 2d, 37½ ft. (lineal) of narrow door jambs, &c., $5 97. Third, 80 ft. (lin.) transom rail, &c., $20 00. Fourth, 138⅔ ft. (lineal) of architraves, &c., $19 41. Fifth, 26 lights of transom sash 13 x 31, &c, $34 45. Sixth, 52 pivots to extra transoms, $5 20.

Q. I do not think you took up all the items about the stair case.

A. I see one item here for 10 ft. of plain casing to the opening in partition made by the change ordered to back stairs, 10c., that is extended $10. There must be an error in this printed pamphlet or in the original bill, for it should not be more than $1 00.

204 Q. Anything else?

A. By the change of stair-case taking it inside the dining room instead of outside, it enlarged these closets, and I allowed him $6 00 for the additional extent thus caused. This item with the one of 10 ft. of plain casing, &c., makes $7 to be added to what I have already you.

Q. Mr. H., what I want you to do is to separate in this bill of extras the exact amount of the items charged for reconstructing the work after the settlement.

A. What I have just given you relates to the alteration of the stairway and does not enter into the settlement. The first item that I see in relation to reconstructing, is, (p. 16,) 455 ft. (sup.) 14 in front wall, &c, $136 50. Second, 3,000 best quality front brick, &c., $60 00. Third, 4 bbls. of cement, &c., $10 00. Fourth, 37 ft. (lineal) of marble heads, &c., $46 25. Fifth, 105 ft. (sup.) 9 in. wall, west over alley, &c., $26 25. Sixth, 210 ft. (lin.) of joisting, &c., $52 50.
Seventh, 14 yards of excavation, &c, $3 50. I see an item here for "2
205 extra cast-iron curbs to vaults, and necessary by reason of the undue settlement." I do not know what is meant by that at all. There must be a mistake somewhere.

By a juror. Perhaps it required deeper curves than you had there when the arch settled.

Witness. Oh, that had escaped my memory. I see now that that was the case.

Q. Are there any other items?

A. Here is one for (p. 16, top) "105 lbs. wrought-iron rods, with nuts, to strengthen vaults, 12½ c., $13 12½." Here is another for "use of long limbers, and working sewering front, $20 00."

Mr. Brent. According to these items I make $397 00 for repairs in couse-

quence of the settlement, and $739 16 for work done not caused by the settlement.

A. I do not know what they foot up. I have given you the items.

Q. Look at the specifications and contract, Mr. H., and tell me if there was not some work omitted to be done, with or without her consent, by which omission the cost of labor and materials was diminished.

206 A. I cannot bring to my mind now any but what were offsetted by special agreement. Yes; I do remember something about door-knobs. I recollect the specifications called for silver-plated door-knobs, and as there was great difficulty in obtaining such, white porcelain knobs were substituted.

Q. What other changes were made?

A. There was to have been in the store or warehouse several columns of plate run along the middle. This was omitted by special arrangement between them, the parties offsetting between them. I cannot recall the terms at present.

Q. Were there no other changes that you can specify?

A. I recollect of no others.

Q. Mr. H., have you any knowledge of any notice having been given by anybody that the building was a nuisance before Mr. Jones left it?

A. I have no knowledge other than there was some scrib in the newspaper about the time, a sort of sensation article; but by whom written I do not know.

Q. Didn't you consider the walls in a dangerous condition, toppling over?

A. No, sir. I knew they were not.

207 Q. Were they out of perpendicular?

A. Not sufficiently to injure any one. They were slightly necessarily so.

Q. Would you have liked to have lived in that building with the walls that much out of perpendicular?

A. I would have had no objection, knowing as I did how it was constructed

Q. Do you know when Mr. Jones ceased to do work upon that building?

A. I think it was in April.

Mr. Brent. I know; but we have a note of his here dated in December, Dec. 4th. (Read note.) I will ask you whether, to the best of your knowledge, this is a correct statement of the condition of those three stores and that warehouse on the 4th of Dec.?

A. I have no reason to doubt it at all. It is indorsed. (Read indorsement.)

Q. I will ask you why it was those keys were not delivered from the 4th until the 13th of Dec.?

A. I know. Mr. Jones was debating some time whether the keys should be delivered at all. I have no knowledge on that subject other that what I got from him. The condition of the work was as stated in his first note at the time of that first note.

208 Q. When did you measure all this extra work?

The measurement was made before the keys were delivered to Miss Dermott. Then, after the first decision of the S. C., I measured it preparatory to a trial here.

Q. At whose request?

A. At Mr. Jones's request, I think; he called on me as a professional measurer here in conjunction with Mr. Morsell, also a professional measurer.

Q. Were these stores completed and rendered fit for occupation by merchants for the winter season of 1851?

A. The avenue stores were certainly all completed, and in good time, by the beginning of Dec., and the warehouse was also completed in good time, with this exception, that the settlement had put the one door and window above it out of square.

Q. Was it at that time in a terrible condition?

A. I think so. I heard of an offer to rent it being made, though I was not present at such offer.

Q. When was the hotel part, in your opinion, fit for occupation?

A. In the spring of the next year.

Q. Then it was not fit for occupation on the 1st day of Dec.?

209 A. No, sir; the interferences of Miss Dermott precluded the possibility of his completing the work by that time.

Q. If no settlement had taken place, and she had given Mr. Jones timely notice of the changes, that he could have adapted his resources to them, could he have completed the building within the time named?

A. Had Miss Dermott given Mr. Jones timely notice of the changes which she desired to the plans and specifications, so that he could have adapted himself to these changes in time, he could have got that work completed within the period specified in the contract; but as she did not do that, but reserved these alterations until the time when it was necessary to be done, and they being so multiform in character, they resulted in the end to a prevention of the completion of his contract within the time specified.

Q. If she had required not one solitary alteration, and that settlement had taken place as it did take place, do you believe that he could have completed that building within the contract time?

A. The settlement of that wall had no effect upon the avenue stores as being insurmountable.

Q. Had it any effect?

It had effect in causing a reconstruction of the front wall; but the wall that formed the northern boundary of the avenue stores was never disturbed.

Q. When did the settlement first take place?

A. In October, when Miss Dermott called upon me to have me beg

210 the leniency of Mr. Jones in regard to a note of $5,000, which was then due. It was the first or second week in October. She had invested her money in Reading railroad stocks, and as they were then below what she paid for them, she did not wish to sell them at a sacrifice to herself.

Q. How long was it before Mr. Jones finished the reconstruction of that portion of the wall which settled?

A. I am not able to say. It was some time after that before he consented. It was two or three weeks before I was satisfied that it had stopped settling. We went on, of course, with the work on the other parts of the building with the same vigor as though no settling had occurred. It had no effect on the Avenue House. There is only a small room in each story over the alley that was effected by it.

Q. Did he at the time he undertook to reconstruct this wall, to your knowledge, tell Miss Dermott that he would hold her responsible for this extra work, as she had against his protest put on these extra chimneys?

A. I have no knowledge of any such claim being made by him; I only know that he denied her his responsibility under any circumstances.

Q. Were you present at a conversation between Mr. Harbour (now deceased) and Mr. Jones, when the former warned him against reconstructing that wall?

A. No, sir.

211 By a juror. To the best of your knowledge do you know whether Miss Dermott acknowledged the claim of $5,000 to be legitimate after this settlement had taken place?

A. At the time of which I have just spoken, the settlement had probably reached about one half the distance of the two inches. She then acknowledged her obligation to pay, and admitted that the settlement had not been as great as my alarming representations, before she started the building, had authorized her to expect; but that the settlement was unduly concentrated at one place. She continued in a pleasant mood in regard to it for, I suppose, a month after this,

but failed to raise this $5,000. She told me that she had applied to Mr. Smith, at the Bank of Metropolis, a friend of hers, to hypothecate her stock, but that Mr. Smith declined to let her have the money upon this stock, and she was unwilling to sell at a sacrifice. In the mean time this wall continued to decline until it reached its four inches, and then she called on me, as before stated, to know who was responsible for the settlement. She then first started the question as to her not being bound to pay this $5,000 at once, became unfriendly to all parties, and resolved on putting the thing through the courts. Up to that time she had never said anything which looked to doubting the claim at all.

212 By Mr. Davidge:

Q. When she was urging you to make fair weather with Mr. Jones, did she at that time understand that the settlement was progressing?

A. I do not know as she did.

Q. Did you inform her that you were delaying the work on this part of the building in order to ascertain the progress of the settlement?

A. I do not know as I did. I did not at that time apprehend that it
212 was going down four inches, the settlement was so silent and gradual. I may say, however, that up to that time she was satisfied as to the entire work, both as to the time and to the quality, and would have paid the $5,000 if she had had the money.

By a juror. Did she seem to be a lady of mechanical ideas?

A. She had, in her judgment, superior ideas to mine. I thought I knew a little more about house building than herself, but I could not divert her at all from many points in the building which I knew to be wrong. She described to the minutest details, the forms of the moulding, the height of the wash-boards, &c. She said she had made that building her study for 15 years, and she therefore trusted more to her own judgment than to the opinion of workmen who had been bred up to it.

By Mr. Davidge. Was she really a woman of extraordinary mechanical ability?

A. She was. She knew all about the construction of a house.

Mr. Brent objects to such evidence.

Court decides objection came too late.

At the suggestion of Mr. Bradley, the witness proceeded to explain, by means of a diagram, the plan of the basement and the back building.

Adjourned.

213 TUESDAY, *March* 21, '65

Z. Jones sworn.

By Mr. Davidge:

Q. You are the plantiff in this cause?

A. Yes, sir.

Q. You are the contractor named in the contract which has been read to the jury?

A. Yes, sir.

Q. I wish you would state, Mr. Jones, when you completed the different parts of this building, and delivered them over to Miss Dermott?

Q. I tendered the keys to Miss Dermott on the *the* 4th day of Dec, '51, for the store, by a note to that effect.

Q. And the residue of the building at what time?

A. On the 5th day of April, '52, I was ready to deliver her the keys.

Q. State the condition of the building at the time you delivered the respective portions to which you have referred.

A. The three stores on the 7th street market space, as it is called, were then ready for occupation.

Q. State the conditions of the rest of the building when that was delivered in April.

A. The building was completed, according to my understanding of the
214 contract and specifications, excepting that portion that was sunk.

Q. You were to deliver the stores on the 1st of October, and the residue of the building on the 1st of Dec.?

A. Yes, sir; that was what the contract called for.

Q. I wish you now to state the causes that prevented you so delivering the building.

A. The first cause of the delay was in the alteration of the basement story on 7th street, the avenue part of the house. I had got that part up according to the plans and specification. The walls were ready to have the joists put on, and Mr. Walker had them all prepared and laid along the walls, and the joist holes all cut in the east wall of Mr. Bradley's store. At this stage of the work, Miss Dermott came to me and asked me to make a change—to add one foot to the story. I told her I would not do it. She went to Mr. Harkness, I presume, for he immediately came to me and requested that I would suspend the work, and have those joists taken off, and build the walls up. I told Mr. H. I would not; and then he appealed to me again not to be so resolute and determined about it. He remarked that she was a lady, and I ought to try and accommodate her. I told him I should never consent myself to any alterations in the plans or specifications. The joists were taken off by Mr. Walker and his men.

215 Q. Mr. Harkness was Miss Dermott's architect and superintendent?

A. Yes, sir. I got the bricklayers again, put the foot on the wall, walled up these joist holes that were cut, cut other new joist holes a foot higher, and they were proceeding to put the joists on again when she demanded another alteration—to have the joists lowered four inches. I refused again. Mr. H. took the responsibility, and had the joists lowered four inches, he (Mr. H.) assuring me that I should be paid, and no advantage taken of me.

Q. Mr. Jones, what had become of the bricklayers when you stopped the work to allow of Miss Dermott's first alteration?

A. They had gone off to other work. Any mechanic who knows anything about building, knows that it is always customary for us to put a story on a house, and then—having sometimes a dozen buildings on hand at the same time—take our hands off and transfer them to work somewhere else until the carpenters can adjust the joists, &c.

Q. In a building like that what time was required for the carpenters' work after the brickwork had progressed to the point you have mentioned in your testimony?

A. I do not think it was less than two weeks from the time that al-
216 teration was made until the time when we were enabled to get the men back again and commence on the next story.

Q. How many joist holes had you cut in the adjoining building?

A. We had to cut two tiers, and then we had to lower the joist holes four inches. The third time we had to lower them four inches, and to take out two courses of brick.

Q. What is the length of that west wall?

A. I think it is about 80 or 90 feet. We did not have to cut the joist holes all the way, but only back about 50 feet, because the sky-light took off a part of it.

Q. Then what do you think was the delay occasioned by first elevating the wall and then letting it down four inches?

A. I think some two weeks; probably more.

Q. Does that include the time that would have been consumed any way by the carpenters in laying their joists and getting ready for another story?

A. No, sir. They were very heavy N. C. joists, 24 feet long, I think, and they were troublesome to move round; but notwithstanding their weight, we had to move them from the building to a vacant square near by, and then bring them back, and so on, which, of course, consumed a good deal of time.

Q. State the next delay.

A. The next delay was caused by the change of girder.

Q. What girder was that?

A. The one up over the main stairway.

Q. Explain the circumstances of that?

A. Well, we had the walls up, and the joists pretty nearly all on, when either Mr. Harkness or Miss Dermott, or both, concluded to abandon the wooden girder and to substitute an iron one. In order to make this change we had to stop everything. I had to take my hands off, and allow a portion of them to walk about, not having work enough elsewhere on which to put them. We had to delay the progress of our work until we could get a pattern for the girder and have it cast.

Q. How long was that suspension?

A. Probably ten days. We were delayed in the same way when we reached the next story, and the next.

Q. State any other causes of delay.

A. We were delayed when we got to the fifth story of the building, in the alteration of the stairway.

Q. How long was the delay occasioned by that change?

A. I cannot name the number of days, but we had to suspend the work on all the walls. Everybody knows the delay occasioned in getting drawings for iron work, getting the iron brackets arranged in their places, taking the hands off, sending them elsewhere, and then getting them back again. It must have all consumed at least a week, and probably longer.

217 Q. What else?

A. The next delay was caused by putting in the gas pipes after the walls had been plastered. We had gone on and second coated the stores when Mr. Thompson's men came and ripped up the flooring, laths, and ceilings, so as to get his gas pipes in without their being seen. We had to wait until that was done before we could resume.

Q. Was any delay created by her failure to select the marble mantels?

A. Yes, sir.

Q. Under the contract she had the right to select the marble mantels?

A. Yes, sir, and she did finally select them.

Q. When?

A. I think some time after December.

Q. Where were these mantels to go?

A. In the parlor. I wrote her several notes requesting her to select these mantels, and she promised me from day to day to do so, and I will state further that I called on her several times and finally got her up to Mr. Rutherford's. She selected the mantels there and I paid Mr. Rutherford for them.

Q. How long was the delay occasioned by her failure to make the selection?

A. I suppose a month or two. Then she gave Mr. Rutherford orders, after they were purchased, not to set them until she let him know.

218 Q. Were you present when she told Mr. Rutherford this?

A. Yes, sir.

Q. State the next delay, Mr. Jones.

A. There was delay in the finishing of the basement stores on account of the change of the ceiling.

Q. How was the ceiling to have been originally?

A. With plank, tongued, groved, and beaded, under the specification.

219 Q. Why was it not so?

A. Miss Dermott chose to have plastering there in the place of it. We had everything in readiness to put these boards up, and were about proceeding to do so, when we had to go to work and get the plasterers, have the ceiling lathed and plastered, and then wait until that could dry before we could finish it.

Q. What else caused delay?

A. There was great delay in selecting grates. She had the right, under the contract, to select grates. I tried several times to get her to make these selections, but could not get her to do so; and I finally went and purchased them myself.

Q. How many grates were there to be?

A. I disremember. Some two or three, I think—two or three new ones. There were some old ones.

Q. Can you recollect any other cause of delay?

A. The tearing down of the partition in the principal story between the parlors, to suit Miss Ann's peculiar views, caused delay.

Q. Well, Mr. Jones, what was the effect? Just aggregate the whole thing.

220 A. It would have been impossible for me to have finished the building by the time named in the contract with all these interferences and delays. Those things never were broached to me, until we got right up to the point, and we had to suspend. A great many of those alterations were made without consultation with me. The whole alteration of the stairway was without any consultation with me at all.

Q. Suppose you had been let alone to carry out your contract, what would have been the result?

A. I should have finished the contract within the time agreed upon.

Q. That is, the stores on the 1st of October, and the residue of the building on the 1st of December?

A. Yes, sir.

Q. Mr. Jones, before you delivered the building, did you make a careful inspection of it?

A. I did. I got two or three mechanics to go and examine it.

Q. State to the jury your opinion in regard to the completeness of the building.

221 A. I considered the building complete, according to the terms of the contract and the specifications, in every particular, except that sinking. I did not recognize that as any fault of my own.

Q. Now we come to the sinking. You repaired the first settlement that took place?

A. I did.

Q. Do you recollect how great that settlement was?

A. I did not measure it myself, but I think it was about from four to 4½ inches.

Q. Then it settled again?

A Yes, sir

Q. Mr. Jones, I wish you would describe how far your bill for extras shows the expense to which you were put in consequence of these delays caused by Miss Dermott.

A. I left that matter entirely to Mr. H. I got him to go there as a measurer, and to measure the work, and then to make out an estimate and statement of the work, because I knew that anything I could present to Miss Dermott would have no effect with her. He was then paid by her, and I relied

222 upon his integrity to do both of us justice.

Q. And he acted as sworn measurer, taking into consideration the increase of labor and material?

A. He allowed me for just what the rules and regulations of the book allowed me, but nothing more.

Q. He made no allowance for the delays on her part, that caused you damage?

A. No, sir. Just here I will mention another delay which I have not yet spoken of. I refer to the change of the grade in the pavement. This caused a delay of some five or six weeks in the setting of the steps. The steps according to the original plan, encroached upon the pavement some 6 or 7 inches more than the law allowed. Mr. Maury was mayor at that time. She went to Mr. Maury, and appealed to him—

Mr. Brent. Were you present?

A. I had it from Miss Ann's own lips. She said she went to see Mr. Mairy, but he refused her the privilege. She then petitioned the council, but
223 failed of success. Thus she kept us at bay for some two or three months. Finally, I gave Mr. Emory orders to go on and set the steps, giving him positive orders to allow no living being on earth, I didn't care who, to stop the setting of the steps; and that if he did stop, it was at his own risk. Mr. Emory brought the steps there, had the platform laid across the area, and had some three or four steps laid. At this stage the work was stopped. By whom I do not know, further than what was stated by Mr. Emory. He said Mr. H. stopped him. The steps were left in this unfinished condition, on the ground, but I paid Mr. Emory for the steps, platform, and all complete, at the original contract price. A portion of the steps are laying there now. The platform is used for a carriage step.

Q. Miss Dermott got no permission, either from the mayor or the council, did she?

A. No, sir.

Q. Was the cost increased in consequence of these delays?

A. Certainly.

224 Q. State, if you please, how and to what extent, by the delays and interferences of Miss Dermott, the cost of the work and materials you had contracted to furnish upon that building, was increased?

A. In the first place, it brought me into short days. Men cannot do as much work in short days as they can in the regular long days. Then again, cold weather coming on, that necessitated the building of fires. I had, of course, to purchase stoves and fuel, and I had to keep the fires up in order to dry the plaster, and keep it from freezing. I had to keep a watchman there to attend to the fires; and then again, my insurance policy increased in consequence of having these fires.

Q. State as well as you can, what in your opinion was the increased cost, owing to this fault of Miss Dermott.

A. Well, I can only give a mere opinion. I suppose it cost me some three or four thousand dollars more.

Q. Your own time is a large element in the computation?

A. Certainly. I was kept there three or four months longer than I would otherwise have been.

225 Q. Mr. Jones, state the condition of the earth foundations of this building when they were dug out.

A. After we had dug down some distance we found a solid clay foundation so far as human eye could see.

Q. What means were taken by you to test the solidity of the foundations?

A. Mr. Walker took a crowbar and probed it, and Mr. Harkness and myself also examined it. We congratulated ourselves upon the appearance of the earth, and the apparent solidity of the foundation.

Q. Could you discover the slightest indication of unsoundness?

A. I could not.

Q. Was Miss Dermott there?

A. She was, and was there almost every day, especially in the first part of the undertaking.

Q. Was any objection made by her either to the appearance of the foundation or the tests?

A. No, sir; she congratulated herself on the solidity of the foundations, and approved of them.

Q. Mr. Jones, something has been said in this case about your having
226 wilfully abandoned your work. I understand you in your testimony to state that you left that building complete, as you honestly believed at the time, in view of the demand of the contract and specification, excepting the settlement of the front and the warehouse walls, and that settlement you did not consider yourself to be responsible for?

A. I consider that building now as good a job, I think, as there is in this city of contract work. People may and look at it now after it has stood there for 13 years, examine the work, and, I am sure, there will be no better material bought anywhere in the U. S. than was put in that building. Mr. Deale measured the joists and pronounced them the best N. C. joists he ever saw. Mr. H. made out the plans and specifications, and would not permit me to change one iota.

Q. When you left the building was it with a view to abandon the execution of your contract, or under the conviction that you had completed it?

227 A. I was under the conviction that I had complied literally with the contract.

Q. What was the opinion of Miss Dermott's architect, Mr. Harkness?

A. He was satisfied, so far as the work was done.

Q. Miss D. was there from time to time during the progress of the work?

A. Oh, yes, sir; she was there very often.

Q. Did she raise any objection to the materials, or the manner in which the work was being done?

A. No, sir, not the least. She was so much gratified that she told me she would make me a present of a splendid suit of clothes as soon as the work was done.

Q. When did this amiable disposition of Miss D. toward you change?

A. After the payment of the $5,000 had become due and she refused to pay me. She at first excused herself by saying that she had invested her money in bonds or stocks, and that if she sold them then she would meet with a heavy loss, but she would go up and see Mr. Smith and see if she could not
228 borrow money of him. She kept promising for several weeks to pay me, until finally on my speaking to her about it she said that she had been advised by her lawyer not to pay me.

Q. When she first told you she would pay you, had the settlement begun?

A. Yes, sir, and she congratulated herself on going to look at it, stating, that from what she had heard she feared it had settled a foot.

Q. At the time she went to look at it, I understand the window sills and heads were cracked right up to the roof?

A. Yes, sir.

Q. Did she make any objection when she saw the settlement, to paying the $5,000 due on the 1st of October, except to ask a postponement in consequence of her money being invested in stock?

A. That was what she said. She at that time made no objection to paying at all. Mr. Davidge, there is one cause of delay I forgot to mention. I refer to the battening and lathing of those walls and plastering them, and then there was delay again in filling up those wall holes.

229 Q. What was the condition of the basement when you left house?

A. Perfectly dry.

Q. Did you go down and examine?

A. I did. I went all the way through with Mr. Barron, Mr. Henry Davis, and some others.

Q. Had the weather been such, from the time you began to dig that foundation until the time you left it, to afford a sufficient test of the drainage of that building?

A. Yes, sir. Just as we had got the cellars dug there came a very heavy rain, and within an hour or two after the rain had ceased we were enabled to resume work in the cellar.

Q. Do you know how long the building remained shut up after you left it?

A. I do not.

Cross-examination by Mr. Brent:

Q. Mr. J., you filed a bill in chancery against Miss D., did you not?

A. Yes, sir.

230 Q. Did you claim in that bill anything but your balance on the $24,000?

Mr. Bradley. Show the witness the paper, and then read the paper.

Mr. Brent. I will show it to the witness, but defer reading it for the present. Mr. Jones, do you say that the warehouse was finished on the 4th of Dec? What do you mean by stating in this letter, which I will read, that "it will be ready in a day or two?"

[Read letter.]

Q. Can you tell how many days the three stores in the south front had been ready before you wrote that?

A. I cannot now; but I presume three or four days before I wrote that letter.

Q. What caused the damage to that door in the warehouse?

A. The settlement. That corner pier had gone down, and by that going down it carried the door with it.

Q. Had not the window heads above cracked at that time?

A. Yes, sir; and had been taken out.

Q. You had, then, reconstructed this wall when you wrote that note?

231 A. Yes, sir.

Q. Then after you had reconstructed it, that warehouse front door had again settled?

A. Yes, sir; it was bound in the centre, caused by the wall going down at one end. We trimmed it off, and thus made it to open and shut.

Q. The three stores and the warehouse were not finished, as I understand you, by the 1st of October?

A. No, sir.

Q. Then they were not completed when Miss D. asked you to excuse her for the non-payment of the note for $5,000 due on the 1st of October?

A. No, sir.

Q. Can you fix the exact time when she took the broad ground that she would not pay you anything?

A. I cannot.

Q. Was that after you first tendered the keys, or before?

A. She refused to pay it before I tendered her the keys.

Q. Will you state whether Mr. T. C. Daniels didn't call on you on the 5th, and deliver you a letter from Miss Dermott?

A. He may have done so.

232 Q. Have you that letter?

A. I may have a letter from her.

Mr. Brent. Please examine this, which is a certified copy of a letter which Mr. Daniels says he delivered to you from Miss Dermott. It is dated, I believe, the 5th of December.

[Witness proceeds to examine letter.]

Q. Did you deliver the keys when that letter was sent you?

A. I think not. I have no distinct recollection of having received such a letter, though I may have.

Q. If you had tendered them on the 4th, why did you not deliver them on the 5th?

A. I think I retained them, if my memory serves me right, for the purpose of consulting a lawyer.

Q. How long was it before you sent the keys of the stores to Miss D?

A. I do not recollect the dates.

Mr. Bradley. Did you address a note to her?

A. I presume I did.

Mr. Bradley. Then they ought to have the letter.

234 Mr. Brent. Here it is. I will read it. [Read.]

Mr. Brent. That letter is dated the 13th of December. It appears by that you only tendered the keys of the stores. Was there a key to the warehouse door?

A. Certainly there was.

Q. Did you send the keys of the warehouse with the keys of the stores?

A. I cannot say, Mr. Brent.

Q. Here is another letter filed by you on the 21st of Dec., which I will read. [Read.] Mr. J., didn't Miss Dermott assign as a reason for not wishing the marble mantels put up right away, that she thought it would be improper to put them up until the question of settlement was determined?

A. No, sir. She never said anything of the kind to me.

Q. Doesn't this letter of the 5th of Dec. tell you so?

A. I do not recollect having received such a letter. If I did I gave it into the hands of my then counsel, Mr. Carlisle.

Q. Mr. Jones, about that railing, when was that put up?

235 A. Some time in the fall or summer. I do not know the date exactly.

Q. What was the cause of the delay there?

A. Because of their connection with the steps, which for the reason stated we were unable to put up. The platform had to be set, then the copying to be finished up, and then the railing finished up to that.

Q. Did you at the time these alterations was made agree to them?

A. No, sir, I never did agree to them, and have not to this day.

Q. Don't you call it agreeing to them when you charge for them?

A. No, sir; I am only trying to get my pay back if I can.

Q. Did you not know that Mr. Walker, who was then a partner of yours, or if not a partner, foreman for you, was doing that work?

A. Certainly I knew it.

Q. Who paid for the iron girders?

A. I did.

Q. You did not consider that as assenting to the substitution when you paid for them?

A. No sir. I paid for a good many things then which I did not con-

236 sent to have done.

Q. Who ordered them?

A. Some of them Mr. Walker ordered. I gave Mr. Walker power to order some things.

Q. Did you give him power to order the iron girders?

A. Perhaps I did. I cannot say at this late day in regard to any particular item.

Q. Mr. Jones, can you tell us how many of these specifications you omitted?

A. I do not know that I omitted any. There may have been some omitted, but I have no recollection of any.

Q. Will you inform us what delay the stone steps not being put up caused to the work in the interior of the building?

A. I did not say it did in the interior. The building was completed without the steps.

Q. Did you never make any contract with her yourself for an extension
237 of the time in consideration of your consenting to make these alterations?

A. I never did; and I would like to give you the reason.

Mr. Brent. Go on and state your reason.

A. In 1850 she had sent for me some time during the winter, and got me to make an estimate for remodelling the old building and putting up an addition. I sent her a written proposition, which you read here the other day. She went to work and had a contract drawn. On its being read before Mr. Harkness, Gen. Jones, Miss Dermott, and myself, when a certain clause was reached, I told them they might stop there, that I would never sign that contract.

Mr. Brent. Which contract are you referring to now?

A. The contract of 1850. She begged me to sign it, as did Gen. Jones and Mr. Harkness also. I told them I would not sign any contract which bound me to a forfeit as it did. That one never was executed, but was followed
238 up by another in the spring of 1861, (*sic.*)

Q. Those are the reasons why you never asked for an extension of the time from her?

A. I knew what Miss Ann Dermott was, and knew full well that if I opened the door once that would be an end of it. In the winter of 1851, she sent for me again, begging me to come back to see if we couldn't agree to some con-
239 tract; that she would yield all the objections I had to the contract of 1850, and would try and draw up one which would suit my views. She drew up a contract—at least Gen'l Jones did for her in 1851. This contract provided for the altering of the old building again, and the putting up of these additions. I signed that contract. The old beings (*sic*) had commenced to be torn down, excavations made, &c., when somebody persuaded her to tear the whole of the buildings down, making a clean sweep of the grounds. Another contract was accordingly drawn, which was read to me. I refused to sign that again, but upon the assurance—

(Examination interrupted by objection on the part of the party putting the question, and continuation of answer waived by counsel for the plaintiff)

Q. Mr. Jones, about the chimneys, did you have any contract with her at the time the two chimneys were put on?

A. She demanded to have the chimneys put up in the 5th story of that warehouse; but I protested against it.

Q. Did you make any contract with her at that time?

240 A. We were to leave off the chimneys on the skylight wall, but she would not consent to leave them off unless they were substituted into this warehouse. I had objected to these chimneys going there in the first place.

Q. But you signed the contract for them to go there?

A. That is true, but still I protested against it.

Q. Who put those hanging chimneys up?

A. My workmen.

Q. With your knowledge?

A. Certainly.

Q. Mr. Jones, is it your opinion that these hanging chimneys caused this wall to settle?

A. I shall venture no opinion upon it. I am not scientific enough in that business to do so.

Q. Do you venture any opinion as to the cause of the settlement?

A. The cause of the settlement was owing to the defect in the earth somewhere.

Q. Mr. Jones, after the first settlement, didn't you say that you would make it all right?

A. I stated to Mr. Andrews, in a conversation, when he approached me in an omnibus, while coming from Georgetown one day, that if Miss Ann would do what was right, and pay me, she would have no cause of complaint.

241 Q. When you were reconstructing this wall, did Mr. Harbor warn you that it was no use for you to go on building up there?

A. If he did so, I have no recollection of it.

Q. When you entered into that contract you were aware that there was danger of the existence of an alluvial deposit or mud, didn't you?

A. I was not.

Q. Why, then, did you want the wooden cornice put on instead of the stone one?

A. That was afterwards?

Q. Was that before or after you signed the contract?

A. Well, I had signed one contract.

Q. Was it before or after you had signed this contract?

A. It was before I signed this contract?

Q. I wish you to state whether when you signed this contract you did not consider it doubtful whether the earth foundations would carry that building with that stone cornice upon it?

A. I considered that she had too slender walls for that. After she had made this subsequent contract, I stated my reasons to her for objecting, telling her that the walls were not of a sufficient thickness. She at first contemplated building a four-story house, but after we had commenced the work, going

242 on with it, she changed her mind, and had a 6 story house put up.

Q. Had not the soil been represented to you as doubtful?

A. I had heard Mr. H. and Miss. D. discussing that subject often. Both the slenderness of the walls and the doubtful character of the soil, as I had heard it represented to, led me to interpose the objection I did.

Q. Had you ever built any house in that immediate neighborhood or the canal before?

A. I built Jackson Hall, on the avenue.

Q. Did you ever find any blue mud down there?

A. No, sir; nothing but a beautiful yellow clay, and the building stands there to this day.

Q. Is not the ground a little higher towards Capitol hill, than it is at other points along the avenue?

A. I do not know whether it falls particularly that way or this way. The avenue was all formed when I came to the city. I, before that, put up a large building in the rear of that square for Mr. Kirby.

Q. At what time did you finish the reconstruction?

A. I cannot tell the exact time, but somewhere between the 1st of October and December.

Q. How long before it settled again?

A. I cannot say.

243 Q. Did you ever measure the maximum of that settlement?

A. No, sir; but I got some gentlemen to go there and do so?

Q. Will you state whether, when you tendered the keys of that building, the walls were not out of perpendicular?

A. Some little, but they could not be much, because in reconstructing it, I put a heavy bar timber across and anchored it to the south wall of the alley.

Q. You think you prevented any danger of its falling?

A. As to any danger I did not say that, but I do not think it would have fallen from the settlement. All walls will settle more or less in settling down.

Q. Did you ever see blue mud there?

A. I saw blue fuller's earth down there the other day when we were digging.

Q. How long ago was that?

A. I do not know whether it was the 1st of Feb. or the 1st of March.

Q. Is that fuller's earth blue?

A. It is mixed with blue; sometimes blue and white. It may have been blue clay, but there was no blue mud about it.

Q. Do you the difference between it and blue marsh mud?

244 A. I have never examined any blue marsh mud to find out the difference.

Q. Where did you find this the other day?

A. About 45 or 48 feet from the front wall on 7th street.

Q. Did you see any near the 7th street front?

A. No, sir.

Q. The greatest depression, I believe, was at the corner of 7th street?

A. We could not get there on account of the coal laying in the cellar.

Q. Which do you suppose weighed the most, the brick cornice or the hanging chimneys?

A. The difference between the two is this: The weight of the brick chimneys was concentrated at one point, while that of the brick cornice was distributed all along. The weight of the brick cornice, if that weight were concentrated at any one point, would of course be greater than the chimneys.

By the court. You say you found blue clay at the base of the crib that was put under the reconstructed wall.

A. Yes, sir.

Q. What do you know about the relation of that blue clay to the other foundations of that building; or do you know anything in regard to it?

245 A. I do not. I have not examined any other part.

Matthew G. Emory sworn.

By Mr. Bradley:

Q. State, if you please, whether you did any stone work on this building?

A. I agreed to complete the cut stone work in accordance with Mr. Jones's contract.

Q. Do you know anything about the blue-rock work that is in that building?

A. I do. I made an estimate, and was the lowest bidder for it; but was persuaded, for certain reasons, to let another party do it.

Q. A competent workman?

A. Oh, yes, sir.

Q. Have you ever had occasion to look at that work there during its progress, or after its completion?

A. I have.

Q. State the character of the work, if you please.

A. The materials were of the very best quality, from O'Neal's quarry—the best we get in this section. The mortar was in accordance with the specification.

246 Q. The dimensions of the stone—were they not suited to the work?

A. Yes, sir; and were of the best quality that could be had.

Q. Do you recollect who built it?

A. Mr. Losry, a stone-mason in this city, and a very fine workman too.

Q. Do you know anything about the stone walls that ran around the area?

A. I do. I saw them constructed.

Q. Do you recollect of any projection in the stone wall?

A. Just beneath and in front of the main entrance. I took down the wall and made a projection there myself, in order to get a good foundation for the base of the columns of the steps.

Q. You were to put up those steps?

A. I was.

Q. Is that the original design? (Handing witness a diagram.)

A. It is.

Q. Did you put them up; and if no, why not?

A. I had put 6 or 7 steps, and had the rest there ready to raise, when I was stopped in the progress of my work by the commissioner of the corporation, and by Miss Dermott and Mr. Harkness.

Q. Do you recollect at what time that was?

247 A. In the fall of the year some time. I know that Mr. Jones was very anxious I should put them up, and requested me not to stop for anything; but she did not want me to go on until she got permission either from the mayor or city council, as by the plan the steps were to extend one foot more than was allowed by the corporation, that is, 8 feet instead of 7.

Q. You had everything ready to complete the work within the time contemplated by Mr. Jones when you were thus interrupted?

A. Yes, sir.

Q. And as to the materials left there?

A. I was paid for the work just the same as though I had completed it.

Q. Paid by Mr. Jones?

A. Yes, sir. The steps laid there all the winter, and I sold them afterwards. A part of the platform is there now, used as a carriage step. I have a portion of them at the yard now, having purchased them from old Mr. Line, to whom they were sold by the court.

Cross-examination by Mr. Brent.

Adjourned.

248 Note.—The examination was here adjourned to be continued at the same place on Saturday, the 17th day of March, A. D. 1866, at 11 o'clock in the forenoon, of which the parties, by their solicitors, had notice.

M. ASHFORD, *Examiner.*

And there, to wit, on the said 17th day of March, 1866, at the time and place aforesaid, came the complainant, by his solicitor aforesaid, and the defendants, John H. and Osborn Ingle, and Dade Hooe, and others, by their solicitors aforesaid, when and where the said complainant produced as a witness for and on his behalf one Jonathan T. Walker.

M. ASHFORD. *Examiner.*

249 *Deposition of Jonathan T. Walker for complainant.*

And the said Jonathan T. Walker, being about the age of 54 years, and being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, touching the matter at issue in said cause, I did carefully examine said Jonathan T. Walker, and he did thereupon depose, testify, and say as follows, in answer to interrogatories put to him by Mr. Davidge, solicitor for complainant:

For the last five years I have resided in Prince George county, in Maryland. Before that time I resided in the city of Washington for about thirty years, during which time I was engaged in the business of house-building. My trade is that of house-carpenter. I knew the late Ann R. Dermott. I became

250 acquainted with her about the time that the complainant entered into a contract with her for the erection of the buildings at the corner of 7th street west and Market space. I have known the complainant for upwards of thirty years. I was engaged with the complainant in the construction of the buildings under the contract before mentioned. During the progress of the work I superintended it, and was familiar with the contract, specifications, and

plans. I was present during the construction of the buildings daily, except Sundays; indeed, I passed nearly all my working time at the premises. I examined, from time to time, the work and materials put in the buildings. The work and materials were the best that the market could afford, and in every respect up to the demands of the contract and specifications. I never saw better timber put into a building of any kind.

By the terms of the contract, the stores and warehouse were to be completed on the first of October, 1851, and the rest of the work on the first of December following

The work was not completed at those times. The stores in the main
250½ building and the warehouse on 7th street were completed and delivered early in December, 1851, and the residue of the building was delivered in the April following.

Upon the execution of the contract and specifications we made every arrangement necessary for speedily promoting the execution of the work. Pending the progress of the work there was no delay occasioned by reason of any material to be used on the building, or the want of sufficient force to carry on the work.

The delay in the completion of both the stores and warehouse, and also the residue of the building, was owing altogether to the frequent changes made by Miss Dermott and to her failure in supplying such portions of the work as by the terms of the contract devolved upon her.

The complainant would always protest against any change in the work. She would, however, insist upon the changes being made, and said that she would take the responsibility. She always understood from Mr. Harkness and myself, in the frequent interviews we had with her, that those changes would necessarily involve delay, and she always expressed herself as willing to take the responsibility.

251 I have no doubt whatever that, had no change been made by her, the whole of the work would have been completed by the time specified in the contract. When I speak of the completion of the whole work I mean to except the delay occasioned by the sinking of the foundation.

The foundations of the building were dug out in precise accordance with the specifications. The sinking took place at the intersection of the south wall of the warehouse with the wall binding on 7th street, the latter wall being dependent on the former. My recollection is that the extent of the sinking all told was about eight and a half inches; it sank twice. After the first sinking the damage was repaired by the complainant, under the assurance by Harkness that he should be paid for the repairing. It afterward sank again.

In my judgment the sinking was caused by the addition of two hanging chimneys which Miss Dermott insisted should be suspended on the south wall of the warehouse, and which were not called for by the contract or specifications.

When the foundations were dug out the soil presented a foundation of
252 a reliable character; indeed, I never saw a better foundation. Mr. Harkness and myself congratulated each other that we had succeeded in finding such a good foundation. It was tested by us in the usual way and believed to be sufficient.

The paper now shown me is, to the best of my recollection, a correct account of the cost of the extra work performed by the complainant on the building. [The witness here refers to the printed paper before produced, and marked "M. A No. 3."] It includes the cost of repairing the first sinking.

For cross-examination vide page 44.

Note.—The examination was adjourned here, to be continued at the same place on Monday, the 19th day of March, A. D. 1866, of which the parties, by their solicitors, have notice.

M. ASHFORD, *Examiner.*

And then, to wit, on the said 19 h day of March, A. D. 1866, came the complainant, by his solicitor aforesaid, and the said defendant, John H. Ingle, in proper person, and the said defendants, Dade Hooe, and others, by their solicitor, Mr. Morgan, whereupon said complainant produced and exam-
253 ined as a witness on his behalf John H. Ingle.

Deposition of John H. Ingle for complainant.

And the said John H. Ingle, being about the age of 31 years, and being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, touching the matter at issue in said cause, I did carefully examine said John H. Ingle, and he did thereupon depose, testify, and say as follows, in answer to interrogatories put to him by Mr. Davidge

I am the administrator de bonis non cum testimento annexo of the late Ann R. Dermott. My father, the late John P. Ingle, was executor of her estate, and after his death I received from the orphans' court of this District letters of administration as above. I found this deed among the papers of the estate of Ann R. Dermott that came into my possession. [Witness here produces paper writing, marked "M. A. No. 4," and hereinto annexed.]

254 There are also among the papers of the estate three bonds similar to those referred to in this deed of trust, one in favor of Sarah E. Tubman, May 1st, 1846, for fourteen hundred dollars, with payments indorsed thereon, and a receipt for the balance of principal and interest due on said bond, signed "Sarah E. Tubmann," and which receipt is dated the 13th May, 1848, and witnessed by Mary E. Wilmer, who resides in the State of Maryland, and whose handwriting I am acquainted with; the signature in her name is her genuine handwriting.

There is also the bond of Miss Dermott, dated the 1st May, 1846, in favor of George W. Tubman, and for three thousand dollars with payments indorsed thereon, and a receipt dated 2d January, 1863, and in favor of my late father as executor. It purports to be signed by S. W. Tubman.

There is also a paper signed "Geo. W. Tubman," acknowledging the payment of his bond, and authorizing the heirs of Richard Dement to release the said deed of trust. This paper is witnessed by Charles Bradley. The signature of Chas. Bradley is genuine; I know his handwriting.

255 There is also among said papers the bond of said Miss Dermott, in favor of Magruder Dement Tubman, dated May 1st, 1846, and for three thousand dollars, with sundry payments indorsed thereon, and a receipt annexed for the balance of principal and interest, signed S. W. Tubman, administrator, said receipt being dated April 12th, 1862.

There is also a paper reciting the delivery of the bond in favor of Magruder Dement Tubman to the executor of Miss Dermott, the same having been fully paid, and authorizing the release of the deed of trust above mentioned. This paper is dated April 12th, 1862, and is signed "Mary E. Wilmer" and "S. W. Tubman." The signature of Mary E. Wilmer I know to be genuine.

I know that George W. Tubman and Mary E. Wilmer administered on the estate of Magruder D. Tubman, the payee mentioned in the bond.

I prefer not filing the papers I have above described, as they concern the settlement of the estate, and are necessary for the protection of the estate of my father, as well as for my own protection.

[Mr. Davidge consents that these papers may be retained by the witness to be at the hearing if necessary.]

256 Among the papers of the estate there are three deeds of trust, one dated August 31st, 1835, to Richard Dement as trustee, to secure four bonds dated 31st August, 1835, and in favor James N. Tubman, Sarah E. Tub-

man, George W. Tubman, and Magruder D. Tubman, each for the sum of twelve hundred and fifty dollars.

These bonds are all marked in ink, with a pen, across the face and through the signature of Ann R. Dermott, as if for cancellation.

Also a deed of trust from Ann R. Dermott to Richard Dement, dated January 1st, 1838, to secure four bonds in favor of the same parties, of the same date, and each for three hundred and fifty dollars. These bonds are also among the papers of the estate, and marked across their face in the same manner as above mentioned.

Also a deed of trust dated 1st of November, 1841, to Richard Dement, trustee, and to secure four bonds of the same date, each for the sum of two thousand dollars, in favor of James N. Tubman, Sarah E. Tubman, George W. Tubman,
and Magruder D. Tubman. These bonds are also among the papers of
257 the estate, and are indorsed "cancelled, Rd. Dement, guardian," and the signature of Ann R. Dermott to each of them is scratched over with crosses in ink.

The only personal property that come into my hands belonging to the estate of Ann R. Dermott was $10,000 in bonds of the city of Davenport, Iowa, which are not saleable; amount collected of Barruch Hall, of between two and three hundred dollars, and a judgment against C. S. Wallach, trustee, of about $4,000, upon which nothing has been realized, though it is well secured.

My father, as executor, overpaid in behalf of the estate to the amount of some three hundred dollars, and his executors are creditors of the estate.

The claims due general creditors of the estate of Miss Dermott passed by the orphans' court will amount to over $5,000.

The personal estate is wholly insufficient to pay the claims of general creditors, irrespective of the complainant's claim.

JNO. H. INGLE,
Adm'r, &c., of A. R. Dermott.

Subscribed and sworn to before

M. ASHFORD, *Examiner.*

258 *Deposition of Zephaniah Jones for complainant.*

And the said Zephaniah Jones, being about the age of 50 years, and being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, touching the matter at issue in said cause, I did carefully examine said Zephaniah Jones, and he did thereupon depose, testify, and say as follows, in answer to interrogatories put to him by Mr. Davidge:

I am the complainant in this cause, and have resided in this city since the winter of 1837. My trade is that of bricklayer and house-builder. I commenced my trade as bricklayer in 1831. I commenced the business of master builder and contractor in 1840.

The papers now shown me are the original contract and specifications [witness here refers to paper writings marked M. A., Nos. 1 and 2] entered into between Miss Ann R. Dermott, deceased, and myself.

At the time the contract was signed, I was at work tearing down the
259 old buildings and excavating for the new one. Before the contract and specifications were signed, I had made all necessary arrangements for speedily carrying on the work. I first went to work under a previous contract which provided for the erection of a warehouse and improving the old building but Miss Dermott changed her plans, and the result was the present contract and specifications.

Upon the execution of the papers I proceeded with all the fidelity and diligence

in my power to execute the terms of the contract on my part, and would have completed the work in accordance with the terms of the contract and specifications, and at the times named in the contract had it not have been for the interference of Miss Dermott.

For the first payment under the contract, the five thousand dollars due on the first of July, 1851, I received Miss Dermott's check on the Bank of the Metropolis, which was paid; that is all the money that I ever received.

The work and materials furnished on the building were, if anything, superior to such as was called for by the specifications. They certainly did not fall below the demands of the specifications. Had I been let alone by Miss Der-
260 mott, and had she supplied the work reserved to her under the contract and specifications, I could have completed the stores and warehouse, and the residue of the building at the times specified in the contract. I mean except for the sinking of the south wall of the warehouse, which sinking, I believe, was caused by an additional weight imposed upon this south wall and which was not called for by the contract, which additional weight was superadded at the instance of Miss Dermott against the earnest remonstrances of the superintendent, Mr. Harkness, and myself.

When we remonstrated with her, she replied "that she was a Jackson democrat, and would take the responsibility."

From time to time during the progress of the work, Miss Dermott insisted on alterations and additional work.

Her first interference was after the basement walls had been run up to the height prescribed and the joists partially levelled, when she insisted on the height of the basement being increased eight inches. The bricklayers had then left the building to give way to the carpenters, who were engaged in levelling off the joists.

I positively refused to make the alteration, but her superintendent, Mr. Harkness, had it done. After the walls were raised, as insisted upon, and the joists nearly laid, she then conceived that the elevation was too great, and in-
261 sisted on the joists being lowered. I again protested, and refused to have the work done, but Mr. Harkness again had it done.

Again, after the joists were laid on the second story, according to the specifications, she concluded that the wooden girders came too near the flues, and insisted on substituting cast-iron girders; the work had to be suspended entirely until patterns could be made and iron girders cast, which occasioned a delay of two or three weeks. The same change had to be made in the next story, and this caused further delay, as the order for the change was not given until that portion of the work was reached.

There were other numerous alterations made during the progress of the work, against which I, in every instance, protested. She assured me from time to time, when she required alterations to be made, that she would take no advantage of the delay, and that I should be paid for the extra work; I always protested against the alterations, but they were made by the men working under me and at the instance of Mr. Harkness.

About the 5th or 6th day of December, 1851, I delivered to Miss Dermott the stores and warehouse, and about the 5th of April following, I delivered to her the residue of the building.

The work when delivered, excepting the damage occasioned by the
262 sinking of the wall, and except that the front steps were not set, was in all respects in accordance with the specifications, save so far as the same had been altered by her.

I had given orders to Mr. Emory to set the steps and the work was on the ground and Mr. Emory was engaged in setting them when she, (Miss Dermott,) sent an order requiring that the work should be suspended.

I ordered Emory to stop for no one, and the next thing I knew Mr. Harkness

the truth touching the matter at issue in said cause, I did carefully examine said Matthew G. Emory, and he did thereupon depose, testify, and say as follows, in an answer to interrogatories put to him by Mr. Davidge:

I have been a resident of the city of Washington since the year 1840. My occupation since 1842 has been that of stone-cutter and master builder.

I examined the repairs made on the building belonging to Miss Ann R. Dermott, at the corner of Market space and 7th street, in consequence of the sinking of the south wall of the warehouse. I think the examination was made last spring. We dug under the walls and found the timbers placed
270 underneath, and took the dimensions of the work both under the ground and above it. The extent of the repairs was readily ascertained. We could see where the new work was joined to the old. I had previous knowledge of the extent of the repairs. They were made by Mr. Meincey at the instance of Miss Dermott. Mr. Colley, of Baltimore, had charge of the work under Mr. Meincey. When the repairs were being made, I was in the cellar and saw the extent of the reparation both above and below ground. I furnished once stone for the repairs. The repairs were made in 1852, I think, after the complainant had delivered up the building. In making the estimate of the work and materials which entered into the repairs we allowed the highest prices prevailing at the time that the repairs were made.

The examination and estimate was made by Mr. Edmonston, Mr. Lewis, Mr. Morsell, Mr. Brien, Mr. Harkness, and myself, all of whom were master builders, and we all concurred in the estimate.

The sum total of it was $\$1,912\frac{17}{100}$. I was employed by the com-
271 plainant to furnish all the cut stone work about the building, and as part of it the front steps on 7th street. I was urged be the complainant to have the steps ready by the time prescribed by his contract; all the rest of the stone work had been completed. I had all the stone work on the ground, and was proceeding to set the steps, and had made considerable advancement in setting them when Miss Dermott ordered the work to be stopped. The complainant objected to my stopping, and ordered me to proceed. Had I gone on they would have been set within the time prescribed. Miss Dermott came to see me at my house, and requested me to stop. I did not promise her that I would. Mr. Harkness, her superintendent, then came and requested me to stop, and I yielded to their earnest request and stopped. The reason stated by Miss Dermott for having the work stopped was, that they projected beyond the line prescribed by the building regulations, although they were being constructed in accordance with the plans and specifications. When the work was stopped some seven or eight steps had been set.

272 I recollect aiding Miss Dermott to obtain the consent of the city councils to the projection of the steps beyond the line prescribed by the building regulations, but without success.

M. G. EMERY.

Sworn to and subscribed before me this 20th day of March, 1866.

M. ASHFORD, *Examiner.*

And thereupon the complainant recalled as a witness John H. Ingle, who further deposed and testified as follows:

Ingle recalled:

In the year 1863, when I took possession of the property, the rents amounted to between four thousand and five thousand dollars per annum. They have since increased, and are now six thousand dollars per annum, or a little over that amount in gross.

JNO. H. INGLE.

Sworn to and subscribed before me, this 20th day of March, 1866.

M. ASHFORD, *Examiner.*

273 And thereupon the said complainant produced and examined on his behalf one Thomas Lewis.

274 *Deposition of Thomas Lewis for complainant.*

And the said Thomas Lewis, being about the age of 54 years, and being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, touching the matter at issue in said cause, I did carefully examine said Thomas Lewis, and he did thereupon depose, testify, and say, as follows, in answer to interrogatories put to him by Mr. Davidge:

I was born in this city, and have lived here all my life. My occupation is that of bricklayer and house-builder. I have been engaged in that business for thirty years and upwards.

I was one of a number who examined the extent and value of the repairs rendered necessary by the sinking of the wall of the warehouse in the erected by the complainant for Miss Ann R. Dermott.

We dug down alongside of the wall a sufficient depth to ascertain the kind of timber and stone used in repairing the foundation, and extended our
275 examination along the south wall of the warehouse and along the wall on 7th street. We estimated for all work and materials rendered necessary by the sinking, both above and below the ground

We saw the full extent of the repairs, except an iron girder, said to have been placed in the foundation under the alley which we allowed for.

We estimated the cost of whole of the repairs at $\$1{,}912\frac{17}{100}$, and we based our estimate at the prices of work and materials prevailing in the years 1852 and 1853.

We allowed the highest prices. I would have made all the repairs for that sum.

THOMAS LEWIS.

Sworn to and subscribed before me, this 20th day of March, 1866.

M. ASHFORD, *Examiner.*

276 NOTE.—The examination was here adjourned to be continued at the same place on Friday, the 23d day of March, A. D. 1866.

M. ASHFORD, *Examiner.*

Cross-examination of J. T. Walker.

And then, to wit, on the said 23d day of March, the said examination was continued in pursuance of said adjournment, when the cross-examination of the aforesaid witness, Jonathan T. Walker, was proceeded with by Mr. Brent, and thereupon the said Jonathan T. Walker, upon his said cross-examination, did depose, testify, and say as follows:

I was examined in the case tried at law in the supreme court of the District of Columbia in which the complainant was plaintiff, and the said John H. Ingle, administrator de bonis non cum testimento annexo of Anne R. Dermott, dec'd, was defendant. The case was, I think, tried last spring.

J. T. WALKER.

Sworn to and subscribed before me this 23d day of March, A. D. 1866.

M. ASHFORD, *Examiner.*

277 NOTE.—It was here agreed between Messrs. Davidge and Brent that a copy made by Mr. Clephane of the testimony given by the witnesses, Jonathan T. Walker and Zephaniah Jones, on the trial of the issue at law referred to by the said witness Walker in his cross-examination, should be read

upon the hearing of this cause in the same manner as if the said reporter Clephane, had appeared in this cause as a witness, and had deposed as to what the said witnesses Walker and Jones had testified to on said trial. The said testimony, however, to be subject to all and every legal exception and objection.

M. ASHFORD, *Examiner.*

The examination was here adjourned, to be continued on Saturday, the 2d day of June, 1866, at 12 o'clock, of which the parties, by their solicitors, had notice.

M. ASHFORD, *Examiner.*

278 And then, to wit, on the said 2d day of June, A. D. 1866, pursuant to adjournment, the examination was resumed, when the aforesaid witness, Zephaniah Jones, appeared, and it having been agreed to substitute in lieu of his cross-examination, the testimony of said witness given in the trial at law referred to in the agreement of counsel, noted on page 45 of these depositions, the said witness, Jones, did in my presence sign his deposition aforesaid, the same having been by me first read over to him.

M. ASHFORD, *Examiner.*

And thereupon the said complainant produced as a witness for and on his behalf one Walter S. Cox.

279 *Deposition of Walter S. Cox for complainant.*

And the said Walter S. Cox, being about 39 years, and being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, touching the matter at issue in said cause, I did carefully examine said Walter S. Cox, and he did thereupon depose, testify, and say as follows, in answer to interrogatories put to him by complainant's solicitor:

I reside in Georgetown, in this District; am 39 years of age, and a lawyer by profession.

I knew the late Richard Smith, who was trustee in a deed of trust from the late Ann R. Dermott on the property in this city, at the corner of 7th street west and Market space, to secure a debt due Miss Catharine Smith.

The said Richard Smith was my great-uncle. He died two or three years ago, leaving as his heirs at law Catharine B. Hill, intermarried with
280 Wm. B. Hill; Elizabeth R. Chew, intermarried with *with* Robert S. Chew; and Louisa B. Smith, unmarried.

WALTER S. COX.

Sworn to and subscribed before me, this 2d day of June, 1866.

M. ASHFORD, *Examiner.*

And thereupon the complainant, by his solicitors, announced that he had closed the examination of witnesses on his part, and desired that the aforesaid depositions should be sealed up and transmitted to the court, which is done.

M. ASHFORD, *Examiner.*

282 In the supreme court of the District of Columbia.

ZEPHANIAH JONES
vs.
HORACE STRINGFELLOW and others. } No. 502 chancery.

On motion of W. D. Davidge, esquire, solicitor for complainant, it is, this 9th day of March, A. D. 1866, ordered that testimony be taken before me

orally in this cause, commencing on Wednesday, the 14th day of March, 1866, at 12 o'clock m., at my office, No. 2 Columbian College Law Building, in the city of Washington, D. C., provided a copy of this order be served on the defendants or their solicitors at least three days before the said 14th day of March.

M. ASHFORD, *Examiner.*

To Robert J. Brent, esqr., solicitor for John H. Ingle and Osborn Ingle, ex'rs of John P. Ingle, dec'd, and John H. Ingle, administrator de bonis non c. t. a. of Ann R. Dermott, dec'd.

I accept service this 9th March, 1866, protesting aganst the regularity of this proceeding.

R. J. BRENT.

283 In the supreme court of the District of Columbia.

ZEPHANIAH JONES
vs.
HORACE STRINGFELLOW and others. } No. 502 chancery.

On motion of W. D. Davidge, esquire, solicitor for complainant, it is, this 9th day of March, A. D. 1866, ordered that testimony be taken before me orally in this cause, commencing on Wednesday, the 14th day of March, A. D. 1866, at 12 o'clock m., at my office, No. 2 Columbian College Law Building, in the city of Washington, D. C., provided a copy of this order be served on the defendants or their solicitors at least three days before the said 14th day of March.

M. ASHFORD, *Examiner, &c.*

To George H. Morgan, esqr., solicitor for Dade Hoe and others, heirs at law of Ann R. Dermott, dec'd.

Service acknowledged March 9th, 1866.

GEO. H. MORGAN,
Sol. for Dade Hooe et al.

284 DISTRICT OF COLUMBIA, *county of Washington, ss:*

I, Malon Ashford, examiner in chancery, do hereby certify that, in pursuance of the annexed orders, the foregoing deposition were taken down, and by me reduced to writing, in the presence of and from the statements of the witnesses at the time and place designated in the caption thereof, and were then and there by me read over to the witnesses, and by them subscribed in my presence of W. D. Davidge, esquire, and Geo. H. Morgan, esquire, who was then and there attending, the witnesses having been by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, touching the matter at issue in said cause.

I further certify that I am not of counsel for any of the parties to said cause, or in any manner interested therein.

M. ASHFORD, *Examiner.*

285 *Deed of trust, recorded 21st July, 1840.—A. R. Dermott to Richard Smith.*

This indenture, made this twenty-ninth day of June, in the year of our Lord one thousand eight hundred and forty, by and between Anne R. Dermott, of the city and county of Washington, in the District of Columbia, of the one part, and Richard Smith, of the city and county of Washington aforesaid, of the other part: Whereas the said Anne R. Dermott is justly indebted to a certain Catherine Smith, of the city and county of Washington aforesaid, in the sum of three

thousand and three hundred dollars, current money of the United States of America, to be paid as follows, that is to say, the sum of five hundred dollars, part thereof, on the eighth day of July, which will be in the year of our Lord one thousand eight hundred and forty-one; the sum of five hundred dollars, other part thereof, on the eighth day of January, which will be in the year of our Lord one thousand eight hundred and forty-two; the sum of five hundred dollars, also other part thereof, on the eighth day of July, which will be in the last mentioned year; the sum of five hundred dollars, also other part thereof, on the eighth day of January, which will be in the year of our Lord one
286 thousand eight hundred and forty-three; the sum of five hundred dollars, also other part thereof, on the eighth day of July, which will be in the last mentioned year; the sum of five hundred dollars, also other part thereof, on the eighth day of January, which will be in the year of our Lord one thousand eight hundred and forty-four; and the sum of three hundred dollars, also other part and residue thereof, on the eighth day of July, which will be in the last mentioned year. And whereas the said Anne R. Dermott has agreed to pay an interest on the said sum of three thousand and three hundred dollars, or such part thereof as from time to time shall remain unpaid, at and after the rate of six per centum per annum from the twenty-ninth day of June, in the year of our Lord one thousand eight hundred and forty, by payments to be made on the eighth day of the months of January, April, July, and October, yearly, and in every year successively, the first payment of the said interest to be made on the eighth day of October next ensuing the date of this indenture, all of which will more fully and at large appear by reference to a bond of the same Anne R. Dermott, payable to the said Catharine Smith, and bearing date on the
287 twenty-ninth day of June, in the year of our Lord one thousand eight hundred and forty, which said debt, with the interest thereon accruing, the said Anne R. Dermott is willing and desirous to secure: Now, this indenture witnesseth, that for and in consideration of the premises, and also for the further consideration of the sum of five dollars, current money of the United States of America, to the said Anne R. Dermott in hand paid by the said Richard Smith at and immediately before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, the said Anne R. Dermott hath given, granted, bargained, sold, aliened, enfeoffed, released, and confirmed, and by these presents doth give, grant, bargain, sell, alien, enfeoff, release, and confirm, unto the said Richard Smith and his heirs, the following lots, pieces, or parcels of ground, situate, lying, and being in the city of and county of Washington aforesaid, and described and known on the ground plat or plan of the said city of Washington as follows, that is to say, lot numbered eight, in square numbered two hundred and eighty-eight; lot numbered two, in square
288 numbered seven hundred and five; lot numbered three, in square numbered seven hundred and twenty-five; lot numbered fifteen, in square numbered seven hundred and twenty-nine, and all that part of lots numbered one and twelve, in square numbered four hundred and thirty-two, embraced by and included in the following lines and courses, to wit: commencing at the southeast corner of the said last mentioned square, and running thence west forty-seven feet and two inches; thence north ninety feet; thence west fifty-two feet and ten inches; thence north twenty-five feet and four and a half inches; thence east one hundred feet, to Seventh street west; thence south with the line of said street one hundred and fifteen feet and four and a half inches, to the place of beginning, together with all and singular the buildings, improvements, ways, water-courses, rights, liberties, privileges, hereditaments, and appurtenances whatsoever thereunto belonging or in anywise appertaining,
289 and the reversions and remainders, and all the estate, right, title, and interest whatsoever of her, the said Anne R. Dermott, both at law and in equity, of, in, to, and out of the said several lots, pieces, or parcels of ground

and premises hereby bargained and sold, or meant, mentioned, or intended hereby so to be, and every or any part and parcel thereof:

To have and to hold the said several lots, pieces or parcels of ground, so as aforesaid described, together with the buildings and appurtenances, and all and singular other the premises hereby bargained and sold, or meant, mentioned, or intended hereby so to be, and every part and parcel thereof with their and every of their appurtenances, unto the said Richard Smith and his heirs forever, to the only proper use and behoof of the said Richard Smith and his heirs forever, upon trust, nevertheless, for the following purposes, that is to say: In case the said Anne R. Dermott, heirs, executors, or administrators shall make default in payment of any one or more of the said payments, on the days hereinbefore appointed for the payment of the same, then and in such case,
290 the said Richard Smith and his heirs shall, at the request of the said Catherine Smith, her heirs, executors, administrators, or assigns, proceed to sell the aforesaid premises (or such part thereof as he or they may deem necessary and sufficient to pay the amount of the said debt, or such part thereof as may remain unpaid, and most convenient for the interest of all the parties concerned in said sale,) in such manner after such notice, at such time and place, with such postponements of sale, and upon such terms and conditions of sale as the said Richard Smith and his heirs shall deem most for the interest of all parties concerned in said sale, unless the premises shall be redeemed before such sale, and shall convey to the purchaser by good and sufficient deed in fee all the right, title, interest, and estate which the said Anne R. Dermott has therein, and shall apply the proceeds of said sale, after paying the proper expenses thereof and deducting two and a half per centum of the gross amount of said proceeds as a compensation to the said Richard Smith and his heirs, of his
291 or their trouble and diligence in executing this trust, in the first place to pay to the said Catherine Smith, her executors, administrators, or assigns, whatever part of said debt may remain unpaid, and all proper costs, charges, and expense thereon, and then to restore and pay over the residue, if any, unto the said Anne R. Dermott, her heirs, executors, administrators, and assigns. And the said Anne R. Dermott, for herself and for her heirs, executors, and administrators, doth hereby covenant with the said Richard Smith, and his heirs that she hath good title to the premises, and full right, power, and authority to convey the same, as herein intended to be conveyed; that the premises are free and clear from any incumbrance, (except two deeds of trust to Richard Dermott, to secure the payment of the sum of six thousand and four hundred dollars current money of the United States of America;) that she and her heirs will warrant and defend the said premises until the said Richard Smith and his heirs, and his assigns, under this deed, against all persons whomsoever; and
292 also that the said Anne R. Dermott and her heirs, shall, at all times hereafter, at the reasonable request of the said Richard Smith and his heirs, or his assigns under this, execute, acknowledge according to law, and deliver to him or them any other or further instrument which he or they, or his or their counsel learned in the law, may require or advise for the better conveyance or more perfect assurance of the premises as they are herein intended to be conveyed or assured unto the said Richard Smith and his heirs or his assigns: provided, nevertheless, that until a sale of the premises as herein specified, the said Anne R. Dermott, her heirs or assigns, shall be permitted to possess, occupy, and enjoy the same as heretofore. In testimony whereof, the said Anne R. Dermott, hath hereunto subscribed her name and affixed her seal, the day and year first hereinbefore mentioned.

ANNE R. DERMOTT. [SEAL.]

Signed, sealed, and delivered in the presence of—
B. K. MORSELL,
CLEM'T T. COOTE.

293 DISTRICT OF COLUMBIA, *County of Washington, to wit:*

We, Benjamin K. Morsell and Clement T. Coote, two of the justices of the peace of the United States of America in and for the county of Washington aforesaid, in the District of Columbia aforesaid, do hereby certify that Anne R. Dermott, a party to a certain deed bearing date on the twenty-ninth day of June, in the year of our Lord one thousand eight hundred and forty, and hereunto annexed, personally appeared before us, in our county of Washington aforesaid, the said Anne R. Dermott, being personally well known to us, as the person who executed the said deed, and acknowledged the same to be her act and deed.

Given under our hands and seals this twenty-ninth day of June, in the year of our Lord one thousand eight hundred and forty.

[SEAL.] B. K. MORSELL, *J. P.*
[SEAL.] CLEMENT T. COOTE, *J. P.*

I, R. M. Hall, register of deeds in and for the county of Washington, in the District of Columbia, do hereby certify that the aforegoing and annexed is a true copy of a deed of trust from A. R. Dermott to Richard Smith, dated the twenty-ninth day of June, one thousand eight hundred and forty, and duly recorded in liber W B, No. 79, folio 511 et seq., one of the land records for Washington county, D. C.

294 Given under my hand and seal of office this 19th day of March, A. D. 1866.

[SEAL.] R. M. HALL,
Register of Deeds.

[Inter. rev. stamp, certificate.]

295 UNITED STATES OF AMERICA,
Washington county, District of Columbia, to wit:

To all to whom these presents shall come, greeting:

Know ye, that on the twenty-fourth day of March, in the year of our Lord 1863, letters of administration d. p. n. of all and singular the goods, chattels, and credits, which were of Anne R. Dermott, late of Washington, D. C., deceased, was, by the orphans' court of Washington county aforesaid, granted and committed unto John H. Ingle, of Washington, D. C, the said John H. Ingle, an administrator d. p. n., having first entered into bond in the sum of $12,000 00, with approved securities for the faithful performance of the duties thereof.

Witness, Wm. F. Purcell, judge of the orphans' court of Washington county, District of Columbia, this 2d day of June, anno Domini, 1866.

[SEAL.] Test: Z. C. ROBBINS,
Register of Wills.

[Inter. rev. stamp, certificate.]

296 UNITED STATES OF AMERICA,
Washington county, District of Columbia, to wit:

To all to whom these presents shall come, greeting:

Know ye, that on the sixteenth day of October, in the year of our Lord 1860, letters testamentary of all and singular the goods, chattels, and credits which were of Anne R. Dermott, late of Washington, D. C, deceased, was, by the orphans' court of Washington county aforesaid, granted and committed unto John P. Ingle, of Washington, D. C., the said John P. Ingle, as executor, having first entered into bond in the sum of $20,000 00, with approved securities for the faithful performance of the duties thereof.

Witness, Wm. F. Purcell, judge of the orphans' court of Washington county, District of Columbia, this 2d day of June, anno Domini, 1866.

[SEAL.] Test: Z. C. ROBBINS,
Register of Wills.

[Inter. rev. stamp, certificate.]

297 In the supreme court of the District of Columbia.

ZEPHENIAH JONES
vs.
JOHN H. INGLE, adm'r d. b. n of Anne R. Dermott } At law, No. 1,458.

Plaintiff's costs		$68 88
Clerk's cost on appeal		2 93
		71 61

Test: R. J. MEIGS, *C'lk.*

Cost in Sup. Court, U. S., Dec. 1859	$143 29	
" " " " " " 1864	230 15	
		373 44
		445 05

Test: R. J. MEIGS, *C'lk.*

299 In the supreme court of the District of Columbia.

And now, to wit, on the 25th of Jan'y, 1865, come again into court here as well the said pl't'ff, by Bradley and Davidge, his att'ys, as John H. Ingle, administrator de bonis non cum testamento annexo of the said Ann R. Dermott, deceased, and thereupon the plaintiff, by his said att'ys, filed in court here the mandate of the Supreme Court of the United States as follows, (which is herewith annexed, marked A.)

And the said cause is continued to the circuit court to be held on the 1st Tuesday of February, 1865, at which said term come as well the plaintiff, by his attorneys, Bradley and Davidge, as the defendant by his attorney, Mr. Brent; and thereupon comes a jury of good and lawful men, who, being duly sworn to try the issues joined between the parties upon their oaths, do say that they find the issues in favor of the plaintiff, and assess his damages by reason of the premises at twenty thousand one hundred and thirty-six dollars and twenty-three cents, with interest from April the 5th, 1852, till paid, besides costs.

And thereupon, on the 4th day of April, 1865, the defendant, by his
300 attorney, Mr. Brent, comes and files his written motion to set aside the verdict, and grant a new trial on exceptions filed, which motion is by the court overruled; and thereupon it is considered by the court that the plaintiff recover against the defendant twenty thousand one hundred and thirty-six dollars and twenty-three cents, with interest from April 5th, 1852, till paid, the damages aforesaid, in manner and form aforesaid found, and $ for his costs, to be levied of the goods and chattels which were of the said Ann R. Dermott at the time of her death, which have come, or at any time hereafter shall come, to the hands of the said John H. Ingle, to be administered, if such goods and chattels be sufficient to discharge said damages and costs and all other just claims against the same; and if not sufficient, then said damages and costs to be levied of said goods and chattels ratably with all other just claims against the same.

And, because it is unknown to the court here whether all or only such ratable part of said damages and costs ought to be so levied, it is referred to the auditor to inquire thereof, according to the statute in such case made and provided,
301 and report accordingly.

And from said judgment the defendant prays an appeal to the general term, which is allowed.

And thereupon before the supreme court of the District of Columbia, sitting in general term, on the 3d day of June, 1865, come as well the plaintiff by his attorneys, Messrs. Bradley and Davidge, as the defendant by his attorney, Mr. Brent; and thereupon the defendant's appeal from the judgment of the court in special term or circuit court is submitted to the court without argument; whereupon, after mature deliberation, the matter of said appeal being fully understood, because it seems to the court that, neither in the record of the proceedings of the said circuit court nor in the judgment from which this appeal is prosecuted, there is any error; therefore it is considered by the court that the said judgment be, and the same is, in all things affirmed, and that the plaintiff recover against the defendant the damages aforesaid, in manner and form aforesaid adjudged, to be levied as aforesaid when ascertained by the auditor as directed in said judgment.

In testimony that the foregoing is a true copy of the record in the
302 cause of Zephaniah Jones against Ann R. Dermott, and against John P. Ingle, executor of said Ann R. Dermott, and against John H. Ingle, administrator de bonis non cum testamento annexo of said Ann R. Dermott, I hereunto subscribe my name, and affix the seal of the supreme court of the Dist. of Columbia, this 4th day of June, A. D. 1866.

[L. S.] (Signed) R. J. MEIGS, *Clerk.*

[5ct. Int. Rev.]

Writ of error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the circuit court of the District of Columbia, sitting for the county of Washington, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said court before you, or some of you, between Zepheniah Jones, plaintiff, and Ann R. Dermott, defendant, a manifest error hath happened, to the great damage of the said defendant, as by her complaint appears: We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the records and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court, to be then and there held, and that the records and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, which of right and according to the laws and customs of the United States should be done.

Witness the Hon. Roger B. Taney, Chief Justice of the said Supreme Court.

Issued this 30th day of Nov., 1857.

JNO. A. SMITH,
Clerk Circ't Ct. Wash'n Co., Dist. of Col'a.

Filed 30th November, 1857.

Citation.

DISTRICT OF COLUMBIA, *to wit:*

The United States of America to Zepheniah Jones, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the circuit court of the District of Columbia for the county of Washington, wherein Ann R. Dermott is plaintiff in error and you are defendant in error, to show cause, if any there be, why judgment rendered against the said Ann R. Dermott, in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in this behalf.

Witness the Hon. James Dunlop, chief judge of the circuit court of the District of Columbia, the 30th day of November, 1857.

JAS. DUNLOP.

Served a copy of the within sum's on pl'ff's att'y, this 30th of Nov., 1857.

J. D. HOOVER, *Marshal.*

Copy of appeal bond.

Know all men by these presents, that we, Ann R. Dermott, William J. McDonald, and Andrew Noerr are held and firmly bound unto Zepheniah Jones in the full and just sum of seventeen thousand dollars, lawful money, to which payment, well and truly to be made and done, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated this twenty-eighth day of November, 1857.

Whereas lately, at a circuit court of the District of Columbia, sitting for the county of Washington, in a suit pending in the said court, wherein the said Zepheniah Jones was plaintiff and the said Ann R. Dermott was defendant, judgment was rendered against the said defendant; and she having obtained a writ of error, and filed a copy thereof in the clerk's office of the said circuit court, to reverse the judgment in the aforesaid suit, and citation directed to the said Zepheniah Jones, citing and admonishing him to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next:

Now the condition of the above obligation is such, that if the said Ann R. Dermott do and shall prosecute her said writ to effect, and answer all damages and costs if she fails to make her plea good, then the above obligation to be null and void; otherwise, to be and remain in full force and virtue in law.

ANN R. DERMOTT. [SEAL.]
W. J. McDONALD. [SEAL.]
A. NOERR. [SEAL.]

Signed, sealed, and delivered in presence of—
JOHN CARROLL BRENT.
WILLIAM NOERR.

I hereby certify that from my knowledge of the property of William J. McDonald and Andrew Noerr, sureties in the foregoing appeal bond, I believe to be ample.

JOHN CARROLL BRENT.

Approved by the court.
True copy.
Test: JNO. A. SMITH, *Cl'k.*

Style of court.

DISTRICT OF COLUMBIA, *to wit:*

At a circuit court of the District of Columbia, begun and held in and for the county of Washington, at the city Washington, on the third Monday of October, being the nineteenth day of the same month, in the year eighteen hundred and fifty-seven, and of the independence of the United States the eighty-second.

Present, James Dunlop, chief judge; the hon'ble James S. Morsell and Wm. M. Merrick, ass't judges; Jonah D. Hoover, esq., marshal.

JOHN A. SMITH, *Clerk.*

In the records of proceedings of said court, amongst others are the following, to wit:

Parties.

ZEPHENIAH JONES
vs.
ANN R. DERMOTT.

Be it remembered that heretofore, to wit, on the thirteenth day of July, in the year eighteen hundred and fifty-two, the said plaintiff, by Bradley & Carlisle, esqs., his attorneys, prosecuted and sued forth out of the circuit court here the United States writ of capias ad respondendum, directed to the marshal of the District of Columbia, in the words and of the tenor following, to wit:

Capias ad resp'm.

DISTRICT OF COLUMBIA, *to wit:*

The United States of America to the marshal of the District of Columbia, greeting:

You are hereby commanded to take the body of Ann R. Dermott, late of Washington county, if she shall be found within the county of Washington, in your said district, and her safely keep, so that you have her body before the circuit court of the District of Columbia, to be held for the county aforesaid, at the city of Washington, on the third Monday of October next, to answer unto Zepheniah Jones in a plea of debt, and so forth.

Hereof fail not at your peril, and have you then and there this writ.

Witness W. Cranch, esq., chief judge of our said court, in the city of Washington, the 22d day of May, anno Domini one thousand eight hundred and fifty-two.

Issued the 13th day of July, 1852.

JOHN A. SMITH, *Cl'k.*

BRADLEY & CARLISLE.

October term, 1852.

At which mentioned third Monday of October, in the year eighteen hundred and fifty-two, and the day of the return of the foregoing writ, come again into the circuit court here the said plaintiff, by his attorneys aforesaid, and the marshal of the District of Columbia, to whom the said writ was in form aforesaid directed, makes return thereof to the court here, thus indorsed, to wit: "Non est."

R. WALLACH, *Marshal.*

Thereupon, afterwards, to wit, on the nineteenth day of October, in the year eighteen hundred and fifty-two, the said plaintiff, by his attorneys aforesaid, prosecuted and sued forth out of the circuit court here an alias United States writ of capias ad respondendum, directed to the marshal of the District of Columbia, in the words and of the tenor following to wit:

Alias capias.

DISTRICT OF COLUMBIA, *to wit:*

The United States of America to the marshal of the District of Columbia, greeting:

We command you that you summon Ann R. Dermott, late of Washington county, if she shall be found within the county of Washington, in your said district, and her safely keep, so that you have her body before the circuit court of the District of Columbia, to be held for the county of Washington, at the city of Washington, on the fourth Monday of March next, to answer unto Zephenia Jones in a plea of debt, and so forth.

Hereof fail not at your peril, and have you then and there this writ.

Witness W. Cranch, esquire, chief judge of our said court, at the city of Washington, the 18th day of October, anno Domini one thousand eight hundred and fifty-two.

Issued the 19th day of October, 1852.

JOHN A. SMITH, *Clk.*

BRADLEY & CARLISLE.

Marshal's return and defendant's appearance.—Rule nar.

March term, 1853.

At which mentioned fourth Monday of March, in the year eighteen hundred and fifty-three, and the day of the return of the aforegoing writ, comes again into the circuit court here the said plaintiff, by his attorneys aforesaid, and the marshal of the district aforesaid, to whom the said aforegoing writ was in form aforesaid directed, makes return thereof to the court here, thereon indorsed, to wit: "Summoned."

R. WALLACH, *Marshal.*

And the said defendant being called, appears in court here, by John Carroll Brent, esq., her attorney; and thereupon, on motion of the said defendant, by her attorney aforesaid, it is ruled by the court here that the said plaintiff declare against the said defendant in the plea aforesaid, or judgment by the court here will be entered against him in default thereof; and thereupon the said plaintiff, by his attorney aforesaid, pray leave of the court here to imparle until the third Monday of October next, and then to declare against the said defendant in the plea aforesaid, and to him it is granted. The same day is given to the said defendant also.

Appearance and imparlance to March term, 1854.

October term, 1853.

At which said third Monday of October, in the year eighteen hundred and fifty-three, to which said day the said plaintiff had leave to imparle, and then to declare against the said defendant in the plea aforesaid, comes again into the circuit court here, as well the said plaintiff, by his attorneys aforesaid, as the said defendant, by her attorney aforesaid, and the said plaintiff, by his attorneys aforesaid, pray leave of the court here further to imparle until the fourth Monday of March next, and then to declare against the said defendant in the plea aforesaid, and to him it is granted. The same day is given to the said defendant also.

At which mentioned fourth Monday of March, in the year of our Lord one thousand eight hundred and fifty-four, to which said day the said defendant had leave to imparle, and then to answer the declaration aforesaid of the said plain-

tiff in the plea aforesaid, come again into the circuit court here, as well the said plaintiff, by his attorney aforesaid, as the said defendant, by her attorney aforesaid; whereupon, on motion of the said defendant, by her attorney aforesaid, the court made the following order, to wit:

Order that the def't elect between the suit at law and bill in chancery, and dismiss either the suit at law or so much of the bill in ch'y as goes for the $5,000.

ZEPHENIA JONES *vs.* ANN R. DERMOTT. } 319. Trials, Mar., 1854.

SAME *vs.* SAME. } No. 923. Bill in equity.

On motion of the defendant, ordered that the plaintiff elect, during the present term of this court, between the said suit at common law and the said bill in chancery, and dismiss either the said suit at common law, or so much of the said bill in chancery as goes for the $5,000 and int. therein claimed, as payable by the terms of the contract under seal, exhibited with said bill on the 1st October, 1851.

By order of the court.

Test: JNO. A. SMITH, *Cl'k.*

Continuance to Oct. term, 1854.

1ST MAY, 1854.

Thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties, by their attorneys aforesaid, and by order of the court here the said cause is continued until the third Monday of October next.

Appearance and continuance to Mar. term, 1855.

At which mentioned third Monday of October, in the year eighteen hundred and fifty-four, come again into the said court here, as well the said plaintiff, by his attorney aforesaid, as the said defendant, by her attorney aforesaid; thereupon, further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties and their attorneys aforesaid, and by order of the court here the said cause is further continued until the fourth Monday of March next.

Appearance and continuance to October term, 1855.

At which mentioned fourth Monday of March, in the year of our Lord one thousand eight hundred and fifty-five, comes again into the circuit court here, as well the said plaintiff, by his attorney aforesaid, as the said defendant, by her attorney aforesaid; thereupon, further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties and their attorneys aforesaid, and by order of the court here the said cause is further continued until the third Monday of October next.

At which mentioned third Monday of October, in the year of our Lord one thousand eight hundred and fifty-five, comes again into the circuit court here as well the said plaintiff, by his attorney aforesaid, as the said defendant, by her attorney aforesaid; and thereupon the said plaintiff, by his attorneys aforesaid, to wit, on the 25th January, 1856, declared against the said defendant in the plea aforesaid, in form following, to wit:

Nar.

DISTRICT OF COLUMBIA, *Washington County, to wit:*

Ann R. Dermott, spinster, was summoned to answer unto Zepheniah Jones, in a plea of debt.

Whereupon the said plaintiff, by Bradley and Carlisle, his attorneys, complain for that whereas the said Ann R. Dermott, at the county aforesaid, on the first day of July, 1852, was indebted to the said Zepheniah Jones in the sum of five thousand for the price and value of certain work and labor done and materials furnished by the said Zepheniah to the said Ann R., and used and employed by her in and about the erection of certain buildings, and finishing and completing certain stores in said buildings, for said defendant, in the city of Washington and county aforesaid, at her request.

And in a like sum of money, for so much money paid by the plaintiff for the use of the defendant, and at her request.

And in a like sum of money, for so much money had and received by the defendant for the use of the plaintiff.

And in a like sum of money by the said plaintiff paid, laid out, and expended, for the use of the defendant, and at her request.

Whereby and by reason whereof, and by reason of the non-payment thereof to the plaintiff on his request, an action hath accrued to the plaintiff to demand and have of the defendant the said sum of money above mentioned.

Yet the defendant has not paid the same, or any part thereof, although the same has been repeatedly demanded of her by the said plaintiff, to the damage of the plaintiff ten thousand dollars, and therefore he sues.

BRADLEY & CARLISLE, *Pl'ff's Att'ys.*

Rule bill of particulars.

Whereupon, on motion of the said defendant, by her attorney aforesaid, it is ruled by the court here that the said plaintiff file in this cause an account or bill of particulars.

And the said plaintiff, by his attorneys aforesaid, file in court here the following bill of particulars of the work done, including the materials furnished by Z. Jones in the erection of Ann R. Dermott's house at the corner of Market Space and 7th street west, up to the 1st day of October, 1851.

Bill particulars.

1,478 cubic yds. excavation, *a* 20 c	$285 60
223¼ perches of stone foundation, *a* $3	670 50
549 25/100 brick work and materials, *a* $13	7,145 12
738 sq. yds. stone paving, *a* 45 c	332 10
333 yds. of brick paving, *a* 55 c	181 50
169 feet, lineal, of moulded brick cornice, *a* 150 c	253 50
	8,862 32
208 3/12 feet, lineal, granite curbstone, *a* 85 c	$176 87
148¾ feet, lineal, 8 x 12 granite coping, *a* 190 c	281 67
65 feet, lineal, granite water table, *a* 125 c	81 25
160 7/12 feet, lineal, granite window sills, *a* 63 c	104 38
386 feet, sup'l, granite stone sills, *a* 65 c	240 00
565 feet, lineal, of mantle heads and sills, *a* 100 c	565 00
3½ feet granite lintel, *a* 65 c., 2 27½; 2 plinth columns, 10 40.	12 67½
1 shop stone, 2 66; 2 gutters until 6 00	8 86
67 7/12 N. Riv. sills and coping, *a* 30 c	20 27
	1,491 67½

31,662 feet N. Carolina joisting and flooring, *a* 16 c	$5,065 92
6,940 feet N. Carolina ceiling joist, *a* 5 c	347 00
6,543 feet roofing, including slate and tin, *a* 18 c	1,177 74
9,500 feet studded partition, *a* 2½ c	237 50
296 feet trussed back wall to warehouse, sheathed and covered with tin, *a* 22 c	65 12
78 feet, sup'l, trussed and bolted gutters to roof, *a* 15 c	11 70
122 windows and door-frames, including the sash, blinds, outside doors, and spleyed jambs, *a* $15	1,830 00
60 inside door jambs, trimmed ready for plastering, *a* $3	180 00
65 risers to geometrical stair-case, *a* $5	325 00
90 risers to back stairs, *a* $2	180 00
28 risers to stairs descending to cellar stairs, *a* $2½	70 00
180 of sky-light sash, *a* 20 c., 36 00; 300 ft. partels to do., *a* 7 c., 21 00	57 00
243 feet, superficial, of reservoir, lined with sheet-lead, *a* 55 c.	133 65
120 feet x 5 N. C. clothes posts, dressed on roof, *a* 15 c	18 00
	10,359 99½
Carpenters' work, lumber, and hardware furnished	9,698 63
650 ft., sup'l, of stone fronts and doors and sash and shutters, *a* $1	650 00
514 feet of balcony floors laid, *a* 15 c	77 10
	10,425 73
27,640 lbs. of casting for girders, columns, store fronts, &c., *a* 3 c.	829 20
5 cast-iron cylinders for vaults	11 20
725 ft. of wrought iron brackets for balconies, *a* 10 c	72 50
	912 90
595 ft. of largest class of tin gutter and spout, *a* 20 c	119 00
167 yds. of 4-coat painting to brick cornice, *a* 37 c	61 79
1,391 yds. of one-coat painting, *a* 7 c	97 37
26 " of 3-coat painting, *a* 20 c	5 20
	164 36
786 " finished plastering, *a* 25 c	196 50
4,524 " of lathing and one coat painting, *a* 9 c	407 16
	603 66

Rule plea.

Whereupon, on motion of the said plaintiff, by his attorneys aforesaid, it ruled by the court here, that the said defendant answer to the declaration afor said of the plaintiff in the plea aforesaid at the next March term of the said cour or judgment by the court here will be rendered against her in default thereof.

Thereupon the defendant, by her attorney aforesaid, defends the force un injury, when, and so forth, and prays leave of the court here to imparle until th fourth Monday of March next, and then to answer to the declaration aforesai of the said plaintiff in the plea aforesaid; and to her it is granted. The sam day is given to the said plaintiff, then and there, and so forth.

Mar. term, 1856.

At which mentioned fourth Monday of March, in the year eighteen hundred and fifty-six, come again into the circuit court here, as well the said plaintiff, by his attorneys aforesaid, as the said defendant, by her said attorney; whereupon the said defendant, by her attorney aforesaid, submits to the court here the following motion, to wit:

2d rule in pl'ff to elect, &c., &c.

ZEPHENIAH JONES vs. ANN R. DERMOTT. } No. 129.—Trials of March term, 1856.

SAME vs. SAME. } No. 923.—Bill in chancery.

The defendant in the aforesaid cases now here submits to the court this her motion for a rule in plaintiff to elect, during the present term, between his said action of debt, pending on the common-law side of this court against this defendant, and his said bill pending on the equity side of this court against the said defendant, as to the sum of money, to wit: $14,000 with interest, for which a decree is prayed against said defendant by plaintiff in his said bill.

WALTER JONES, *for Def't.*

28 April, 1856.

Pl'ff elects to recover only $5,000, mentioned in bill in ch'y.

Whereupon the said plaintiff, by his attorneys aforesaid, filed in court here the following answer to the motion aforesaid of the said defendant, to wit:

ZEPHENIAH JONES vs. ANN R. DERMOTT. } No. 129.—Trials March term, 1856.

In answer to a motion this day made by the defendant in the above-entitled action to elect, &c.:

The plaintiff says, he elects to recover in this action only the $5,000 mentioned in his said bill in equity, to be paid by defendant on the completion of the said stores and warehouse in said bill mentioned and claimed on the 1st October, 1851, with interest, and hereby disclaims all and every right or pretension in this cause to recover any portion of said $14,000.

Order of court dismissing bill in chancery, quo ad the $5,000.

Whereupon the court made the following order, to wit:

The plaintiff having made his election under the said order or rule made at March term, 1854, as aforesaid, to prosecute this action of debt for the recovery of the said sum of $5,000:

It is further ordered by the court, that the said bill in chancery be dismissed, and the same is dismissed accordingly, quo ad the said $5,000.

By order of the court.

Test: JNO. A. SMITH, *Clerk.*

29th April, 1856.

Pleas by defendant.

1st plea.

1. And the said defendant, by W. Jones and J. C. Brent, her attorneys, comes and defends the wrong and injury, when, &c., and says, that she does not owe the said sums of money above mentioned, or any or either of them, or any part

thereof, in manner and form as the said plaintiff hath above thereof complained against her, and of this the said defendant puts herself upon the country, &c.

2d plea.

2. And for further plea in this behalf, as to the said first count of the said declaration—that is to say, as to so much of the said declaration as demands the sum of five thousand dollars for the price and value of certain work and labor done and materials furnished by the said plaintiff to the said defendant, and used and employed by her in and about the erection of certain buildings, and finishing and completing of certain stores in the said buildings, for the said defendant—the said defendant, by leave of the court here, for this purpose first had and obtained, according to the form of the statute in such case made and provided, says that the said plaintiff ought not to have or maintain his aforesaid action thereof against her, because she says that whereas heretofore, to wit, on the 22d day of April, in the year 1851, at the county of Washington, in the District aforesaid, by certain articles of agreement then and there made, concluded, and agreed upon between the said plaintiff, by the name and description of Zepheniah Jones, of the city of Washington, mason and house-builder, of the one part, and the said defendant, by the name and description of Ann R. Dermott, of the same city, of the other part, sealed with the respective seals of the said plaintiff and defendant, the date whereof is the same day and year aforesaid, the said parties did covenant and agree together, each with the other, that he, the said plaintiff, should and would well and faithfully do, perform, and execute, in good, substantial, and workmanlike manner, and in a neat style of finish, such as is proper to the sort and kind of work in its various details, all and singular the houses, buildings, and work of every sort and kind described and specified in a certain schedule to the said articles annexed, marked A, (copied in page 137,) and which, together with all its appendages and details, was to be taken and regarded as part and parcel of the said articles, comprehending all the work and labor of every sort necessary and proper for the pulling down and removal of the houses and buildings standing or lately standing, on the lot referred to in said schedule, and for the removal and clearing off all the old materials and rubish, and for the rebuilding and completion of the new houses and buildings to be erected on said lot, according to the specifications of said schedule; that he, the said plaintiff, would also procure and supply, or cause to be supplied and procured, all and singlar the materials, implements, fixtures, matters, and things requisite and proper for the execution of the said work in all its parts and details, and for the complete fitting for use and occupation of all the houses and buildings, and the several apartments of the houses and buildings to be erected pursuant to the plan of the works described and specified in said schedule; that the said work and works, and the several parcels and parts thereof, shall be executed, finished, and ready for use and occupation, and be delivered over, so finished and ready for use and occupation, at the time and times following, that is to say, the three stores described in said schedule as fronting on Market space, and the warehouse on 7th street, on or before the first day of October then next ensuing, and all the residue of said work on or before the first day of December then next ensuing. That the said defendant, in consideration of the covenants and agreements on the part and behalf the said plaintiff to be performed and executed as aforesaid, and of the due performance and execution of the same, and in full payment and satisfaction for all the work and labor aforesaid, and for all the materials, implements, fixtures, &c., to be by him procured and supplied as aforesaid, should well and truly pay him the full and just sum of twenty-four thousand dollars, by the instalments and at the time and times following, that is to say: five thousand dollars on the first day of July then next ensuing, the further sum of five thousand dollars on the first

day of October then next ensuing, the said stores and warehouse being then executed, finished and ready for use and occupation, and delivered over as above mentioned and agreed on; and the residue of the said sum of twenty-four thousand dollars, to wit, fourteen thousand dollars on the first day of January, A. D. 1860, with interest as follows, that is to say, four thousand dollars, part thereof bearing interest from the first day of May then next ensuing, and the residue from and after the complete execution, finish and delivery of the said work on the first day of December then next ensuing, and all such interest shall be paid quarter-yearly, that is to say, one-fourth part of the yearly interest shall be paid at the expiration of every quarter of a year from and after the time when the same shall have begun to run; that on the complete execution, finish, and delivery of said work on the first day of December as aforesaid, she, the said defendant, should give her bond to the said plaintiff for the due payment of the said sum of fourteen thousand dollars, payable on the said first day of January, in the year 1860, and the interest payable as aforesaid; and shall also give collateral security for the same in and by a deed of trust upon the property on which the said plaintiff had agreed to execute the works specified in said schedule as aforesaid, in which deed there should be inserted, among the other matters usual and proper in such instruments, a clause empowering and requiring the trustee in such deed named to collect and receive from any tenant or tenants of the said premises every such portion and instalment of said interest as shall be and remain unpaid and in arrears for the space of twenty days after demand and refusal of the same; and, as a still further security for the said sum of money and interest, that the same shall constitute and remain a good and valid lien on all the said property, according to the provisions of the act of Congress in such cases provided; but no such lien shall exist, or be or inure to the benefit of any person or persons whatsoever, other than said plaintiff, his executors and administrators, under any pretence of work and labor done, or materials supplied by his procurement, for the execution of his contract and agreement aforesaid; and he shall make all his contracts for such work, labor, and materials, on his own individual and personal account and credit, and so as to forefend all claims on the part of any person but himself to any lien or liens on said property, as by the said articles of agreement and the said schedule, reference being thereunto had, will, amongst other things, more fully and at large appear, (copied in page 137,) which said articles, together with said schedule, being parcel thereof as aforesaid, the said defendant brings here into court; and the said defendant, protesting that the said plaintiff did not at any time or times whatever, well and truly observe, keep, fulfil, or perform the said covenants, conditions, and agreements on his part and behalf to be observed, kept, fulfilled, and performed, or any or either of them, according to the tenor and effect, true intent and meaning of the said articles, says, nevertheless, that the said sum of $5,000 demanded by the said plaintiff in the said court as the price and value of the work, labor, materials, buildings, and stores therein mentioned, is the same identical instalment of five thousand dollars (being parcel of the entire price of $24,000 in the said articles mentioned) which the defendant, in and by the said articles, covenanted and agreed to pay to the plaintiff on the first day of October next ensuing the date of the said articles, upon the condition therein appearing, and was always, as well before as after the beginning of this suit, and yet is, in fact, claimed and demanded by the said plaintiff of the said defendant as and for such instalment, and as due and owing from said defendant to said plaintiff by the terms, force, and effect of the said articles of agreement: without this, that the said work and labor, materials, buildings, and stores in the said first count mentioned were done, furnished, or erected, or that any claim or demand for the said sum of $5,000 therein demanded, or for any part thereof, had or at any time or times whatsoever before the bringing of this suit accrued to *to* the said plaintiff against the said defendant by reason or in the execution of any contract

or agreement whatsoever between the said plaintiff and the said defendant other than or different from the articles of agreement made and concluded between said plaintiff and said defendant in manner and form aforesaid, or for any consideration or on any account whatsoever other than the identical consideration and the said instalment of the identical consideration therein covenanted and agreed on the part and behalf of said defendant to be paid to the said plaintiff in full payment and satisfaction for all the work and labor on the part and behalf of said plaintiff, therein covenanted and agreed to be done and performed as aforesaid, and for all the materials, implements, fixtures, &c., on his part therein covenanted and agreed to be by him procured and supplied as aforesaid; and this the said defendant is ready to verify; wherefore she prays judgment, if the said plaintiff ought to have or maintain his aforesaid action thereof against her, &c.

3d plea.

And for a further plea in the said first count of the said declaration, the said defendant, by like leave of the court here for this purpose first had and obtained, according to the form of the statute in such case made and provided, says that the said plaintiff ought not to have or maintain his aforesaid action thereof against her, because, referring to the said articles of agreement in her said second plea above mentioned, and therein recited and set forth as aforesaid, and to the said schedule thereto annexed as aforesaid, all of which she prays may be taken and regarded as part and parcel of this her plea, in like manner as if the same had been herein again recited and set forth, and again made profer of; and also referring to all such of the statements and averments in the said plea contained and set forth, as go to aver and show the absolute identity of the said sum of $5,000 demanded by the said plaintiff in the said first count of his declaration, and of the consideration, cause, and grounds of such demand set forth in the said count, with the said instalment of $5 000, in and by the said articles covenanted and agreed on the part and behalf of the said defendant to be paid to the said plaintiff on the said first day of October then next ensuing the date of said articles, upon the condition therein appearing, and with the consideration, cause, and grounds expressed in the said articles for the payment of said instalment, which identity she now again affirms and avers, says that though she did well and truly fulfil and perform the said articles of agreement in all things on her part and behalf to be fulfilled and performed, according to the tenor and effect, true intent and meaning of said articles, yet the said plaintiff failed, neglected, and refused to fulfil and perform the covenants and agreements on his part and behalf to be fulfilled and performed according to the tenor and effect, true intent and meaning of the said articles, and, among other such failures, neglects, and refusals, that the said three stores and the warehouse in the said articles, and in the said schedule mentioned, described, and specified, were not executed, finished, and ready for use and occupation, and delivered over, so executed, finished, and ready, to said defendant, either on or at any time before the said first day of October then next ensuing the date of said articles, but that the said plaintiff utterly failed, neglected, and refused so to execute, finish, make ready, and deliver over the said stores and warehouse; and this the said defendant is ready to verify; wherefore she prays judgment, if the said plaintiff ought to have or maintain his aforesaid action thereof against her, &c.

(4th plea.)

And for a further plea to the said first count of the said declaration the said defendant, by like leave of the court here for this purpose first had and obtained, according to the form of the statute in such case made and provided, says that the said plaintiff ought not to have or maintain his aforesaid action thereof

against her, because the said defendant, referring to the said articles of agreement in her said second plea above mentioned, and therein recited and set forth as aforesaid, and to the said schedule thereto annexed as aforesaid, all of which she prays may be taken and regarded as part and parcel of this her plea, in like manner as if the same had been herein again recited and set forth, and again made profert of; and also referring to all such of the statements and averments in her said plea contained and set forth, as go to aver and show the absolute identity of the said sum of $5,000 demanded by the said plaintiff in the said first count of his declaration, and of the consideration, cause and grounds of such demand set forth in the said count, with the said instalment of $5,000, in and by the said articles covenanted and agreed on the part and behalf of the said defendant to be paid to the said plaintiff on the said first day of October then next ensuing the date of said articles, upon the consideration therein appearing, and with the consideration, cause and grounds expressed in the said articles for the payment of said instalment, which identity she now again affirms and avers, says that, though she did well and truly fulfil and perform the said articles of agreement in all things on her part and behalf to be fulfilled and performed, according to the tenor and effect, true intent and meaning of the said articles, yet the said plaintiff failed, neglected, and refused to fulfil and perform the covenants and agreements on his part and behalf to be fulfilled and performed according to the tenor and effect, true intent and meaning of the said articles; and, among other such failures, neglects, and refusals, that the said three stores and the warehouse, in the said articles and schedule mentioned, described, and specified, never were, either on the first day of October next ensuing the date of said articles, or at any time whatsoever before or after that day, executed, finished, and ready for use and occupation, and delivered over, so finished and ready, to the said defendant; but that the said plaintiff utterly failed and refused so to execute, finish, make ready for use and occupation, and deliver over the same at any time or times whatsoever; and this the said defendant is ready to verify; wherefore she prays judgment, if the said plaintiff ought to have or maintain his aforesaid action thereof against her, &c.

JONES & BRENT, *for Def't.*

Leave to amend nar.

Whereupon the said plaintiff, at March term, 1856, being the 30th day of June, 1856, by his attorney aforesaid, prays leave of the court here to amend the nar filed in the said cause, which being granted, he filed in court here the following amended nar, to wit:

Amended nar.

ZEPHENIAH JONES }
vs.
ANN R. DERMOTT. }

DISTRICT OF COLUMBIA, *Washington county, to wit:*

1st count. Ann R. Dermott, late of the county aforesaid, was summoned to answer unto Zepheniah Jones, in a plea that she render unto the said Zepheniah Jones the sum of ten thousand dollars, which to the said Zepheniah she owes, and from him unjustly detains.

And whereupon the said plaintiff, by Bradley and Carlisle, his attorneys, complains, for that whereas heretofore, to wit, on the 22d day of April, in the year 1851, at the county aforesaid, by certain articles of agreement then and there made between the said plaintiff, by the name and description of Zepheniah Jones, of the city of Washington, in the District of Columbia, mason and housebuilder, of the one part, and the said defendant, by the name and description of Ann R. Dermott, of the same city, of the other part, (one part of which said

articles of agreement, sealed with the seal of the said defendant, the said plaintiff now brings here into court,) the date whereof is the day and year aforesaid, in consideration that the said plaintiff thereby agreed well and faithfully to do, perform, and execute in good, substantial, and workmanlike manner, and in a neat style of finish, such as is proper to the sort and kind of work in its various details, all and singular the houses, buildings, and work of every sort and kind, and described and specified in a certain schedule to the said articles annexed, and marked A, (copied in page 137,) and which was to be taken and regarded as part and parcel of the said articles, comprehending all the work and labor of every sort necessary and proper for the pulling down and removal of the houses and buildings then standing, or lately standing, on the lot referred to in said schedule, and for the removal and clearing off the old materials and rubbish, and for the rebuilding and completion of the new houses and buildings to be erected on said lot, according to the specifications of said schedule: and further, to procure and supply, or cause to be supplied and procured, all and singular the materials, implements, fixtures, matters and things requisite and proper for the execution of the said work in all its parts and details, and for the complete fitting for use and occupation of all the houses and buildings, and the several apartments of the houses and buildings, to be erected pursuant to the plan of the works described and specified in said schedule: and further agreed, that the said work and works and the several parcels and parts thereof should be executed and finished and ready for use and occupation at the time and times following, that is to say, the three stores described in said schedule as fronting on Market space, and the warehouses on Seventh street, on or before the first day of October then next ensuing; and all the residue of the said work, on or before the first day of December then next ensuing. The said defendant thereby agrees and bound herself to the said plaintiff well and truly to pay him the full and just sum of twenty-four thousand dollars, ($24,000,) by the instalment and at the time and times following, that is to say, five thousand dollars on the first day of July then next ensuing; the further sum of five thousand dollars ($5,000) on the first day of October then next ensuing, the said stores and warehouse being then executed, finished, and ready for use and occupation, and delivered over as above mentioned; and the residue of the said sum of twenty-five thousand dollars, to wit, fourteen thousand dollars, on the first day of January, A. D. 1860, with interest and with security, as in and by the said articles, brought into court as aforesaid, more fully and at large appears.

And the said plaintiff in fact saith that he did in all things well and faithfully fulfil and perform the said agreement on his part, according to the terms, true intent, and meaning of the said agreement, and that the said sum of five thousand dollars, secondly above mentioned, became and was due and payable to him, the said plaintiff, by her, the said defendant, according to the tenor and effect of the said agreement, to wit, on the first day of October, in the year 1851, at the county aforesaid; yet the said defendant the said sum of money, or any part thereof, to the plaintiff hath not paid, but the same, or any part thereof, to pay wholly neglected and refused, to wit, on the day and year aforesaid, at the county aforesaid, contrary to the tenor and effect of the said agreement, whereby an action hath accrued to the said plaintiff to demand and have of the said defendant the said sum of five thousand dollars above demanded; but the said defendant, although often requested, hath not paid the said sum of money to the plaintiff, or any part thereof, but hath hitherto neglected and refused, and still neglects and refuses so to do, to the damage of the plaintiff ten thousand dollars.

2d count. (In all respects as the first, down to the averment of performance by the plaintiff; then as follows:)

And the said plaintiff in fact saith that he did on his part faithfully perform all things in the said agreement stipulated to be done and performed, according

to the true intent and meaning of the said agreement; and did in fact do and perform all the work and labor, and procure and supply all the materials and implements, and other matters and things whatsoever, stipulated in and by the said agreement to be done, performed, procured, furnished, or supplied by him in the premises; but that the said defendant departed from the terms and stipulations of the said agreement, and required the said plaintiff to do and perform additional work and labor, and to procure and furnish additional materials over and above the work, labor, and materials so as aforesaid by him agreed to be done, performed, procured, and furnished in the premises; whereby the said defendant delayed and hindered the said plaintiff in the premises, and, in fact, prevented him from having the said stores and warehouse executed, finished, and ready for use and occupation, and delivered over to the said defendant, on or before the said first day of October, as the said plaintiff was ready and willing to do, and would have done, but for the said departure by the said defendant from the stipulations of the said agreement, and the additional work, labor, and materials, so as aforesaid by her required in the premises. And the said plaintiff in fact saith that, nevertheless, he did in fact execute and finish the said stores and warehouse ready for use and occupation, and did deliver the same over to the said defendant, executed, finished, and ready for use and occupation, and the same were, in fact, so accepted and received by the said defendant, and used, occupied, and enjoyed by her within due and reasonable time after the said first day of October, to wit, on the fourth day of December, in the year eighteen hundred and fifty-one, at the county aforesaid; and that the said sum of five thousand dollars, secondly above in this count mentioned, became and was due and payable to him by the said defendant, to wit, on the day and year last aforesaid, at the county aforesaid; whereby an action accrued to the said plaintiff to demand and have of the said defendant the said sum of five thousand dollars, above demanded. Yet the said defendant, though often requested, to wit, &c., the said sum, or any part thereof, hath not paid, but the same, or any part thereof, to pay hath hitherto refused, and still refuses, to the damage of the plaintiff ten thousand dollars.

3d count.

3d count. And whereas, also, the said Ann R. Dermott, at the county aforesaid, on the first day of July, 1852, was indebted to the said Zephenia Jones in the sum of five thousand dollars, for the price and value of certain work and labor done, and materials furnished by the said Zephenia Jones to the said Ann R., and used, employed by her in and about the erection of certain buildings, and finishing and completing certain stores in said buildings, for the said defendant, in the city of Washington and county aforesaid, at her request.

And in a like sum of money, for so much money paid by the plaintiff for the use of the defendant, and at her request.

And in a like sum of money, for so much money had and received by the defendant for the use of the plaintiff, and for a like sum of money by the said plaintiff paid, laid out, and expended for the use of the defendant and at her request, whereby and by reason whereof, and by reason of the non-payment thereof to the plaintiff on his request, an action hath accrued to the plaintiff to demand and have of the defendant the said sum of money above mentioned; yet the defendant has not paid the same or any part thereof, although the same has been repeatedly demanded of her by the said plaintiff, to the damage of the plaintiff ten thousand dollars, and therefore he sues.

4th count.

4th count. And for that whereas, also, the defendant heretofore, to wit, on the day and year last aforesaid, at the county aforesaid, was indebted unto the said

plaintiff in the sum of ten thousand dollars for work and labor done and performed, and for materials furnished by the plaintiff for the defendant, at her special instance and request, and in the further sum of ten thousand dollars for money laid out and expended by the plaintiff to the use of the defendant, at her special instance and request, to be paid to the plaintiff by the defendant, when she, the said defendant, should be thereto afterwards requested, whereby, and by reason of the said last mentioned sums of money being and remaining wholly unpaid, an action hath accrued to the said plaintiff to demand and have of and from the said defendant the said sums of money in this count above demanded; yet the said defendant, although often thereto requested, to wit, &c., the said sums of money, or either of them, or any part thereof, hath not paid, but the same, or any part thereof, to pay hath hitherto refused and still refuses, to the damage of the plaintiff ten thousand dollars, and therefore he brings suit, &c.

BRADLEY & CARLISLE, *for Pl'ff.*

NOTE.—A bill of particulars of the work, &c., mentioned in this count, is herewith filed, the same being for the stores and warehouse, and for extra work, &c., beyond the contract.

Ann R. Dermott to Z. Jones, DR.

To 202 ft. lineal of dressed, $\frac{4}{5}$ rails to clothes-posts on roof, 8 c....	$16 16
To 71½ ft. (sup.) balcony frame and floor leading to roof, 15 c....	10 75
To 24½ ft. (lineal) of iron railing to do., and painting, $2 30.....	56 16
To 5 heavy wrought iron brackets furnished and put up to do., $4 50.	22 50
To 7⅔ feet of extension of door frame for a transom over the door leading to balcony, 5th story, and painting, 22 c.....	1 68
To 3 lights 11 x 23 sash and glass, and glazing and painting to do., 87½...	2 62½
To 40 ft. (superficial) of opened and rabbeted door jambs, extended for extra transoms over doors, and painting do., 35 c.....	14 00
To 37½ ft. (lineal) of narrow door jambs extended for extra transoms, and painting do., 16 c.....	5 97
To 80 ft. (lineal) transom rail, rabbeted and bedded, casings to edges and painting of do., for extra transom, 25 c.....	20 00
To 138¾ ft. (lineal) of architraves to extra transoms, and painting, 14 c	19 41
To 26 lights of transom sash 13 x 31, including the glass and painting, $1 75.....	45 50
To 52 pivots to extra transoms, 10 c.....	5 20
To 25 ft. (sup.) of platform, from head of stairs to the doors at balcony, 5th story, including the plasteringto ceiling, 20 c.....	5 00
To 1 extra newel post, turning and painting of do	1 00
To 5⅛ ft. of facias, and noing and painting of do., 28 c.....	1 44
To 5⅙ ft. of mahogany hand-rail and ballusters, and painting do., $1 20.....	6 20
To 175 ft. of stud partition and plastering to do., occasioned by altering the back staircase, at 6 c. per foot.....	10 50
To 1,187 ft. (sup.) battening to west wall, by direction of Miss Dermott, including the value of the lathing to do., 3½ c.....	41 54¾
To 209½ ft. (lineal) of small jamb casings to window frames, made necessary on acc't of battening, and painting do., $4 72.....	9 42¾
To 10 ft. of plain casing to the opening in partition, made by the change ordered to back stairs, 10 c.....	10 00
To increased size of closets, by change of do.....	6 00
To 62 feet lineal of 4 x 6 N. C. posts, and lintel put under iron girder across entrance passage, to assist in supporting chimney, 12 c..	7 44

To 35⅓ ft. (sup'l) $\frac{6}{4}$ open jambs, to cover rough posts, and painting, 28 c		89 89
To 32 ft. (lineal) bedded grounds to do., 9 c		2 88
To 64½ ft. (lineal) $\frac{6}{4}$ opened pilaster to do., and painting, 20 c		12 90
To 8 ft. of crown moulding to do., 12 c	96	
To 2 bare blocks, 35 c	70	
		1 66
To 2 trap-doors, one over each reservoir, 2 dolls		4 00
To 432 ft. (sup'l) stud partition, taken down and set up again on principal floor, by order Miss Dermott, 1½ c		6 48
To 46 ft. of mahogany hand-rail, back stairs—more value than cherry, 8 c		3 68
To 1,440 ft. (sup.) of joists to front stairs, levelled up one foot above contract, by direction of Miss Dermott, and afterwards levelled and relevelled by her order, 1½ c		21 60
To joist holes, cut out one foot high for the above, and filling up do, furnishing mortar and brick, 37½ c		13 50
To 748 lbs. cast-iron girders, put across main passage to support chimney, including setting of do., 3½c		26 18
To 645 lbs. of cast-iron girder, put across the alley, 3d story, 3¾ c.		24 18¾
To 405 lbs. of cast-iron girder across circular passage, 4th story, 3⅝ c.		15 69
To 1,027 lbs. of cast-iron girder, put across alley 7th street front, 3½		35 94½
To 105 lbs. of wrought-iron rods, with nuts, to strengthen vaults, 12½ c		13 12½
To 260 lbs. of cast-iron washers to heads of bolts, 3¼ c		8 45
To 3,300 brick laid in raising the store floor one foot, by direction of Miss Dermott, and by her direction taken off, 6 c		19 80
To use of long timbers, and working sewering front		30 00
To 455 ft. (sup.) 14 in. front wall and rebuilt, brick enveloped in cement, and faced in tucked joints, oiled and penciled, 30 c		136 50
To 3,000 best quality front brick, furnished for do., 20 dolls		60 00
To 4 barrels of cement, and the necessary sand and labor, $2 50		10 00
To 37 feet lineal of marble heads, sills, replacing of those which broke by the settlement, including setting of do., $1 25		46 25
To 105 feet (sup'l) 9-in. wall west, over alley, taken out twice and rebuilt, because of settlement, 25 c		26 25
To 210 feet lineal of joisting, rised, by cutting out brick over do. and filling again with brick and mortar underneath, rendered necessary by reason of settlement, 25 c		52 50
To 14 yards of excavation, by extending alley vaults 5 feet, 25 c		3 50
To 780 brick laid in arch of vault, by extension of do.; the brick all hard, and laid in cement and grated, 15 c		11 70
To 12 $\frac{5}{12}$ ft. (lineal) of water-table more than contract, $1 25		15 52
To 6 extra bells in 5th story, hung in metallic tubes, $7 50		45 00
To 124 feet lineal of extra cast-iron soil pipe, 75 c		93 00
To four elbows		6 25
To 2 extra cast-iron curbs to vaults, made necessary by reason of the undue settlement		5 00
To 5 yards of stone paving in extension of vaults, 50 c		2 50
To sundry repairs to plastering and lathing, occasioned by the insertion of gas pipes		25 00
To cutting through the walls of vault, and repairing of do., for the change of direction of the soil pipe		3 00
To altering of eave gutter to warehouse, rendered necessary in consequence of the settlement in that wall		3 00

To $7\frac{15}{25}$ perches of stone footings to south front wall and a part of the east wall, the old stone wall not being as deep as was supposed, 30 c..... $22 80

1,136 23½

Instalment due on contract on delivery of store and warehouse, $5,000.

Rule plea to amended nar.

Whereupon, on motion of the said plaintiff, by his attorneys aforesaid, it is rule by the court here that the said defendant answer to the amended declaration aforesaid of the said plaintiff in the plea aforesaid, or judgment by the court here will be entered against her in default thereof. Thereupon the said defendant, by her attorneys aforesaid, filed the following objections to the reception and allowance of the said amended declaration, to wit:

Objections to reception and filing of amended nar.

The defendant, by her counsel, takes the following objections to the reception of the within amended declaration, to wit:

1st. Because neither the said declaration nor any of the counts therein contained come within the terms and intent of the general leave and allowance of amendment granted by the court in this cause, and under color of which they have been filed by the plaintiff.

2d. Because if any of the counts contained in said declaration could be held to come within the terms and intents of the leave and allowance of amendment actually granted in this cause as aforesaid, and within the established limits of the competency, power, and authority of this court to grant amendment of pleading; yet the said 3d and 4th counts are quite beyond the court's power, authority, and competency in such cases.

W. JONES & J. C. BRENT,
For Def't.

Oyer of articles of agreement referred to in 1st and 2d counts of amended nar., prayed under protest.

And thereupon the said defendant, by her attorneys, further says that, having already filed objections to the reception of the amended declaration, and more especially of the 3d and 4th counts thereof, filed by plaintiff in this case, under color and pretence of the liberty granted by the court to amed his original declaration, now, without waiving or in any manner relinquishing said objections, or any of them, but still reserving and insisting on the same, prays oyer of the articles of agreement mentioned and recited in the 1st and 2d counts of his pretended declaration.

And the said defendant, protesting that the said declaration has never been presented to the court for acceptance, or in any manner allowed or authorized by the court, the defendant disavows and protests against the authority of the clerk to enter such rule, or in any manner to enforce it or carry it into effect, either by defaulting defendant or by any pro forma issue made by himself.

September 24th, 1856.

Continuance to Oct. term, 1856.

Thereupon further process of and upon the premises aforesaid between the parties aforesaid, by consent of the said parties and their attorneys aforesaid, and by order of the court here thereon, the said cause is further continued until the third Monday of October next.

At which mentioned third Monday of October, in the year eighteen hundred and fifty-six, to which day the said cause was continued, comes again into the circuit court here, as well the said plaintiff, by his attorneys aforesaid, as the said defendant, by her attorneys aforesaid.

Objections to filing amended nar. overruled.

And thereupon the court, after hearing arguments as well on the part of plaintiff as of defendant, upon the said objections filed by the defendant on the first day of July preceding, to the reception and allowance of the said amended declaration, overruled all the said objections, and allowed the said amended declaration to stand; to which defendant, by her attorneys, excepted.

Oyer of writ craved.—Oyer refused by the court.

And thereupon the said defendant, by her attorneys aforesaid, craves oyer of the original writ of capias ad respondendum in this suit, and prays the court to order the clerk to give the defendant such oyer; which prayer the court refused to grant.

Motion to quash, orig'l wr.

Whereupon the said defendant, by her attorneys aforesaid, preferred to the court the following motion:

1. That the original writ in this cause be quashed, for vices and defects appearing on its face, inasmuch as it names no certain sum of money as constituting the debt sued for.

2. That the amended declaration be set aside for vices and defects apparent on its face, in this, to wit:

1st. That the commencement of the declaration is untrue in fact, and varies from the writ, inasmuch as defendant was not summoned to answer plaintiff in such sum as is set forth in said commencement.

2dly. That the aggregate amounts of the debts declared for in the said declaration amount to more than the sum of money named in the commencement, &c.

3dly. That as to the 3d and fourth counts of said declaration, divers and distinct causes of action are joined, instead of declaring for each of the same in a separate count.

4thly. That by the proceedings and record in this case the plaintiff is estopped from introducing the causes of action introduced into the said counts.

W. JONES,
J. C. BRENT,
For Def't.

Objections to amended nar. overruled.

In this cause, the defendant having filed objections to the filing of the amended nar., by which amendments profert was made of certain articles of agreement, and, pending such objections, having craved oyer of the said articles of agreement, to wit, on the 24th Sept., 1856, not waiving but reserving his said objections, it is now by the court ordered, this 17th January, 1857, that the said objections be overruled; and that the plaintiff have leave to withdraw the exhibit No. 1 in his bill against the said defendant, pending on the equity side of this court, on leaving a copy certified by the clerk among the files of the said equity cause.

Oyer granted.

And that thereupon the oyer craved be entered of record in this cause as granted and had; and that the day to plead be enlarged to the first Monday of February next.

By order of the court.

Test: JNO. A. SMITH, *Cl'k.*

Rule plea to 1st Monday in Feb'y, 1857.—Pleas to amended nar.

At which mentioned first Monday in February, 1857, the said Ann R. Dermott, the defendant, by her attorneys aforesaid, comes and defends the wrong and injury, when, &c., and craves oyer of the said articles of agreement in the said first and second counts of the plaintiff's said amended declaration mentioned and made profert of, (the same identical deed and articles of agreement being so mentioned and made profert of in each of said counts,) and it is read to her in these words: "These articles of agreement," &c., (copied in page 132;) which being read and heard, the said defendant says she does not owe the said sum of money above demanded in the said first count of the said declaration, or any part thereof, in manner and form as the said plaintiff has above thereof complained against her; and of this the said defendant puts herself upon the country, &c.; and the plaintiff doth so likewise.

Issue joined to 1st plea.

2. And for further plea in this behalf as to the said first count of the said declaration, the said defendant, by leave of the court here, for that purpose first had and obtained, according to the form of the statute in such case made and provided, says that the said plaintiff did not fulfil and perform the said agreement in all things on his part according to the tenor and effect of the said articles of agreement, in manner and form as the said plaintiff in the said count has averred; and of this she in like manner puts herself upon the country; and the plaintiff doth so likewise.

Issue joined to 2d plea.

3. [Here insert the foregoing plea down to the conclusion, to the country, and omitting that, proceed as follows:] but failed and neglected so to fulfil and perform the same, and especially in this, that he did not fulfil and perform the precedent condition, upon the performance of which on his part the defendant, in and by the said articles of agreement, covenanted to pay the said instalment of $5,000 above demanded by plaintiff in the said first count; that is to say, that the three stores fronting on Market space, and the warehouse on 7th street, in the said articles of agreement and in the said condition mentioned, were not executed, finished, and ready for use and occupation, and delivered over, so finished and ready, to said defendant, on or before the first day of October then next ensuing the date of said articles, according to the tenor and effect of said articles of agreement; and of this the defendant in like manner puts herself upon the country.

4. And as to the residue of the said declaration, the said defendant, by leave of the court here for that purpose first had and obtained, according to the form of the statute in such case made and provided, says that the said second, third, and fourth counts of the said declaration, and the matters therein contained, in manner and form as the same are above stated and set forth, are not sufficient in law for the said plaintiff to have or maintain his aforesaid action thereof against the said defendant, and she, the said defendant, is not bound by law to answer the same, or any of them; and this she is ready to verify. Wherefore, by reason of the

insufficiency of the said three counts of the said declaration in this behalf, the said defendant prays judgment, and that the said plaintiff may be barred from having or maintaining his aforesaid action thereof against her, &c.

And the said defendant, according to the form of the statute in such case made and provided, states and shows to the court here the following causes of demurrer to the said three counts of the said declaration, severally and respectively, that is to say:

Demurrer to 2d count of amended nar.

As to the said second count, for that it is argumentative, vague, and uncertain, in this, that instead of alleging and setting forth the fact or facts and circumstances of his performance of the covenants and conditions, covenanted and conditioned on his part to be done and performed in and by the said articles of agreement, and especially of his having performed the condition precedent, upon the performance whereof on his part the payment on the part of the defendant of the said instalment of $5,000, on the first day of October then next ensuing, depended, it is circuitously and argumentatively alleged in said count that he did on his part faithfully perform all things in the said agreement stipulated to be done and performed, according to the true intent and meaning of the said agreement; and for that the said count attempts to put in issue, to be tried by the country, mere inference and matter of law, viz: whether the acts, matters, or things to be adduced on his part by way of evidence to support his said allegation of performance, were, according to the true intent and meaning of the said articles of agreement, a due and sufficient performance of the covenants and conditions stipulated to be done and performed on his part in and by the said articles of agreement, and especially of the said condition precedent.

And further, that the said count is repugnant, and contains material allegations inconsistent with each other, in this, to wit: that although in the first part of said count a full and complete performance by the plaintiff of all the covenants and conditions whatsoever covenanted and conditioned on his part to be fulfilled and performed in and by the said articles of agreement, is in substance and effect alleged and averred, nevertheless, in the subsequent part of the said count the plaintiff sets up and alleges an excuse for his having failed to fulfil and perform one of the most material of his covenants, namely, the covenant that the three stores described in the said articles of agreement as fronting on Market space, and the warehouse on 7th street, should be executed, finished, and ready for use and occupation, and be delivered over so finished and ready to said defendant, on or before the first day of October thence next ensuing; the due performance of which covenant on or before the said day was in and by the said articles of agreement made a condition precedent to said defendant's said covenant to pay to the plaintiff the said instalment of $5,000, as aforesaid.

And for that the plaintiff, in making out his said excuse, has alleged certain actings and doings of the defendant in the premises, as having hindered and prevented him from performing and fulfilling the said condition precedent, all which actings and doings were manifestly idle, and insufficient and inoperative to produce or in any manner interpose any such hindrance, prevention, or even delay, but left the defendant perfectly free, and nevertheless bound to proceed with the execution of his said contract and the fulfilment of the said condition precedent, had he been so minded.

And for that the said count is double and multifarious in this, to wit, that in substance and effect it sets up and alleges:

First. A complete fulfilment and performance, by himself, of the said contract in all things on his part and behalf to be fulfilled and performed.

Secondly. An excuse for not having performed and fulfilled the said condition precedent.

Thirdly. That he did perform and fulfil it within a due and reasonable time after the said first day of October.

And fourthly. That the said stores and warehouse were occupied and received by said defendant, and used, occupied and enjoyed by her, within a due and reasonable time after the said first day of October.

And further, that the said instalment is not suable and recoverable in an action of debt; but if suable and recoverable in any form of action, it should have been an action of covenant.

Dem'r to 3d and 4th counts of amended nar.

And as to the said third and fourth counts, for that they are, both and each of them, double and multifarious, for that in the third count four several and distinct debts and causes of action, each debt being in the sum of $5,000, and in the fourth count two several and distinct debts and causes of action, each debt being in the sum of $10,000, are alleged and demanded.

For that the said six several and distinct allegations of debt, the four in the third count and the two in the fourth count, are not brought forward, and cannot be received and treated as so many several and distinct counts of the said declaration, being consolidated with and made part and parcel (the first four) of the said third count eo nomine, and the other two of the said 4th count eo nomine; and inasmuch as all the said allegations of debt, subsequent to the first in each of the said counts, are without the commencements and conclusions proper to separate counts of a declaration, and made indispensable by the law and practice of pleading.

And for that the aggregate sum of the debts alleged and demanded in the said two counts, and in each and every of them, greatly exceeds the limit of the aggregate sum of debt sued for and recoverable in this action.

For that the said allegations of debts in the said fourth count are not laid with an alias, or in any other way to distinguish them, or the considerations of the same, or the contract by which they were created from the corresponding allegations of debts in the said 3d count, to wit: from the allegation of the debt of $5,000 for work, labor, &c., in building the three stores and warehouse in the said 3d count mentioned, or from the allegation in the said third count of the debt for five thousand dollars, for money paid, laid out and expended by plaintiff to the use of defendant; on the contrary, the said allegations of debt in the 4th count purport to be the same as the two allegations of debt in the third count, or else to include the same; and so, in either way the plaintiff in the said 4th count has demanded a double satisfaction for the same thing.

And also that the said three counts of the said declaration are in other respects uncertain, informal, and insufficient, &c.

W. JONES & J. C. BRENT,
For Def't.

Dem'r to 3d plea to 1st count amended nar.

And the said plaintiff by his attorneys aforesaid, as to the said third plea of the said defendant by her thereby above pleaded to the said first count, saith that the same, and the matters therein contained, in manner and form as the same are above pleaded and set forth, are not sufficient in law to bar or preclude him, the said plaintiff, from having or maintaining his aforesaid action thereof against the said defendant; and he, the said plaintiff, is not bound by law to answer the same. And this the said plaintiff is ready to verify. Wherefore, by reason of the insufficiency of the said plea in this behalf, the said plaintiff prays judgment and his debt aforesaid, together with his damages by him sustained on occasion of the detention thereof, to be adjudged to him, &c., &c.

And the said plaintiff, according to the form of the statute, &c., states and shows to the court here the following causes of demurrer to the said plea, that is to say:

1. That it is set up and alleged in the said plea, as the true intent and meaning and legal effect of the before mentioned articles of agreement, that the said stores and warehouse should be executed, finished, and ready for use and occupation, and delivered over so finished and ready to the said defendant, on or before the first day of October next ensuing the date of the said articles, as a condition precedent to any duty upon the defendant to pay the said sum of $5,000.

2. That the said plea attempts to put in issue to be tried by the country mere inference and matter of law, viz: whether it be the true construction of the said articles of agreement, that the said sum of $5,000 was only to be paid on the express and absolute condition that the said stores and warehouse should be executed, finished, and ready for use and occupation, and delivered over so finished and ready to the defendant, on or before the said first day of October.

Joinder to def't's dem'r to 2d, 3d, and 4th counts of amended nar.

And the said plaintiff says that the said 2d, 3d, and 4th of the declaration aforesaid, and the matters therein contained, are sufficient in law for the said plaintiff to maintain his action thereof against the said defendant, which said counts, and the matters therein contained, the said plaintiff is ready to verify and prove, as the court shall award; and because the defendant hath not answered the said three counts, nor in anywise denied the same, the said plaintiff prays judgment and his debt aforesaid, together with his damages, by reason of the detention of that debt to be adjudged to him, &c.

Joinder to pl'ff's dem'r to 3d plea to 1st count of amend. nar.

And the said defendant saith that her 3d plea aforesaid, in manner and form aforsaid, by her, the said defendant, above pleaded to the first count of the amended nar, and the matters in the same contained, are good and sufficient in law to quash the said writ of the said plaintiff, which said plea so pleaded, and the matters therein contained, she, the said defendant, is ready to verify and prove, as the said court shall award; and because the said plaintiff hath not answered the said plea, nor hitherto in any manner denied the same, she, the said defendant, as before, prays judgment, &c.

Venire facias to March term, 1857.

Therefore, as well to try the issues aforesaid above joined between the parties aforesaid, to be tried by the country, as to inquire what damages the said plaintiff hath sustained by reason of the premises whereof the said parties have put themselves upon the judgment of the court, if judgment shall thereupon happen to be given for the said plaintiff against the said defendant, let a jury thereon appear before the court here, on the fourth Monday of March next, by whom, &c., and who neither, &c., to recognize, &c., because as well, &c. The same day is given to the said parties then and there, and so forth.

Motion by pl'ff for judg't on his dem'r to 3d plea, and for interlocutory judg't on def't's demurrers.

At which said fourth Monday of March, in the year of our Lord one thousand eight hundred and fifty-seven, comes again into the circuit court here, as well the said plaintiff, by his attorneys aforesaid, as the said defendant, by her attorneys aforesaid; whereupon the said plaintiff, by his attorneys aforesaid, moves the court to cause and order judgment to be entered for him in this cause, as follows:

Upon his demurrer to the third plea, pleaded as aforesaid, judgment for the plaintiff for costs.

And also upon the several and respective demurrers filed by the said defendant; judgment for the plaintiff; each of said last mentioned judgments to be interlocutory only, and to be followed by a special venire for an inquisition to assess the damages sustained by the said plaintiff by reason of the several matters set out in said declaration, and to which said demurrers respectively relate. Judgment accordingly.

Continuance to Oct'r term, 1857.

Thereupon further process of and upon the premises aforesaid between the parties aforesaid, by consent of the said parties, by their attorneys aforesaid, and by order of the court here, the said cause is continued until the third Monday of October next.

And now at this day, to wit, the said third Monday of October, in the year eighteen hundred and fifty-seven, comes again into the circuit court here, as well the said plaintiff, by his attorneys aforesaid, as the said defendant, by her attorneys aforesaid; whereupon, for trying the issues aforesaid, it is ruled by the court here that twelve persons from the panel of petit jurors returned to the court here by the marshal of the District of Columbia be called.

Whereupon the defendant now here moves the court, before the jury is empanelled, to require the plaintiff to elect between a recovery on the bills of particulars filed in this cause under the third and fourth counts of the amended nar., and a recovery on the same causes of action under the bill in equity filed on the equity side of this court by the above plaintiff against this defendant.

R. J. BRENT,
J. C. BRENT,
For Def't.

The plaintiff having heretofore, under the order of this court, elected to prosecute in equity his claim for $14,000, mentioned in the contract, which election is still operative, the court refuses so much of the defendant's motion as applies to that sum, and grants the same so far as relates to the alleged extra work, it being the extra work described in Exhibit No. 3, filed with the proceedings in equity, to wit, $1,136\frac{23}{100}$.

By order of the court.

And thereupon the plaintiff elects to prosecute his said demand on account of extra work in this present suit at law, being the same extra work described in the Exhibit No. 3, with the proceedings in equity, viz., $1,136\frac{23}{100}$.

BRADLEY, CARLISLE & MAURY, *for Pl'ff.*

Octo. 26th, 1857.

The plaintiff having elected to prosecute his claim for extra work in this suit, the defendant objects, and insists that the plaintiff ought not to be allowed to introduce by his amended nar., or otherwise, a new and distinct cause of action which the plaintiff did not originally declare on, or sue for, as shown in his election heretofore filed, as well as by his original nar.; and thereupon, the defendant moves the court to order said fourth count of the amended nar. to be taken off the files, and stricken out of the proceedings in this cause; but the court refused to grant said motion; and thereupon the defendant excepts, and this her bill of exceptions is signed, sealed, and enrolled, on this 26th Octo., 1857, before the empanelling of the jury.

JAS. DUNLOP. [SEAL.]
JAS. S. MORSELL. [SEAL.]
WM. M. MERRICK. [SEAL.]

Verdict on 1st count—damages $5,000.—Jury.

Thereupon the jury being called, came, to wit:

1. James A. Kennedy; 2. John Shaw; 3. Thomas Riggles; 4. George D. Spencer; 5. Wm. Drury; 6. Thos. Fitnam; 7. Dan'l F. Barry; 8. Alex'r Jackson; 9. Geo. B. Smith; 10. Mich'l R. Coombs; 11. Edgar H. Bates; 12. W. A. Kennedy; who being duly empanelled, and sworn to say the truth and assess the damages of and upon the premises aforesaid, upon their oath do say that the said defendant is indebted to the said plaintiff in the sum of five thousand dollars, lawful money, with interest from the first of December, 1851, according to the terms, true intent and meaning of the agreement set forth in the first count of the amended declaration.

And on the fourth count of amended declaration for extra work, return to the court the following inquisition, to wit:

Inquisition on 4th count for extra work.—Damages, $1,136 23½.

This inquisition, made, indented and taken at the bar in the circuit court of the District of Columbia, at the October term, 1857, of the said court, in an action of debt there depending between Zepheniah Jones, plaintiff, and Ann R. Dermott, defendant, witnesseth, that we, the jurors, whose names are subscribed and seals affixed hereto, being duly empanelled, sworn and charged to inquire of the damages sustained by the said plaintiff in the said action by reason of the several causes of action in the fourth count of the declaration of the said plaintiff mentioned, having heard the evidence given in said action, and duly considered the same, do find and assess the damages sustained by the said plaintiff in the said action to be the sum of eleven hundred and thirty-six dollars and twenty-three and a half cents, with interest from April 5th, 1852, and the costs of the said suit.

In witness whereof, we, the said jurors, have hereto set our hands and seals this thirteenth day of November, 1857.

J. A. KENNEDY.	[SEAL.]
EDGAR H. BATES.	[SEAL.]
DAN'L BARRY.	[SEAL.]
WM. P. DRURY.	[SEAL.]
GEO. B. SMITH.	[SEAL.]
MICHAEL R. COOMBS.	[SEAL.]
ALEXANDER JACKSON.	[SEAL.]
THOS. RIGGLES.	[SEAL.]
JOHN SHAW.	[SEAL.]
G. D. SPENCER.	[SEAL.]
THOS. FITNAM.	[SEAL.]
W. A. KENNEDY.	[SEAL.]

Inquisition to 3d count.—Damages 1 cent.

And inquisition as to 3d count, as follows, to wit:

This inquisition, made, indented and taken at the bar in the circuit court of the District of Columbia, at the October term, 1857, of the said court in an action of debt there pending between Zepheniah Jones, plaintiff, and Ann R. Dermott, defendant, witnesseth, that we, the jurors, whose names are subscribed and seals affixed hereto, being duly empanelled, sworn and charged to inquire of the damages sustained by the said plaintiff in the said action by reason of the several causes of action in the third count of the declaration of the said plaintiff mentioned, having heard the evidence given in said action, and duly considered the same, do find and assess the damages sustained by the said plaintiff in the said action to the sum of one cent and the costs of the said suit.

In witness whereof, we, the said jurors, have hereto set our hands and seals this 13th day of Nov., 1857.

J. A. KENNEDY.	[SEAL.]
MICHAEL R. COOMBS.	[SEAL.]
EDGAR H. BATES.	[SEAL.]
DANIEL BARRY.	[SEAL.]
WM. P. DRURY.	[SEAL.]
G. B. SMITH.	[SEAL.]
ALEXANDER JACKSON.	[SEAL.]
JOHN SHAW.	[SEAL.]
THOS. FITNAM.	[SEAL.]
THOS. RIGGLES.	[SEAL.]
G. D. SPENCER.	[SEAL.]
W. A. KENNEDY.	[SEAL.]

Inquisition as to 2d count.—Damages 1 cent.

And inquisition as to 2d count, as follows, to wit:

This inquisition, made, indented, and taken at the bar in the circuit court of the District of Columbia, at the October term, 1857, of the said court, in an action of debt therein depending between Zepheniah Jones, plaintiff, and Ann R. Dermott, defendant, witnesseth, that we, the jurors, whose names are subscribed and seals affixed hereto, being duly empanelled, sworn, and charged to inquire of the damages sustained by the said plaintiff in the said action by reason of the several causes of action in the second count of the declaration of the said plaintiff mentioned, having heard the evidence given in said action, and duly considered the same, do find and assess the damages sustained by the said plaintiff in the said action to the sum of one cent and the costs of the said suit.

In witness whereof, we, the said jurors, have hereunto set our hands and seals this 13th day of Nov., 1857.

J. A. KENNEDY.	[SEAL.]
MICHAEL R. COOMBS.	[SEAL.]
EDGAR H. BATES.	[SEAL.]
GEO. B. SMITH.	[SEAL.]
WM. P. DRURY.	[SEAL.]
ALEXANDER JACKSON.	[SEAL.]
DANIEL BARRY.	[SEAL.]
JOHN SHAW.	[SEAL.]
THOS. RIGGLES.	[SEAL.]
THOS. FITNAM.	[SEAL.]
G. D. SPENCER.	[SEAL.]
W. A. KENNEDY.	[SEAL.]

Judg't.

Therefore it is considered by the court here that the said plaintiff recover against the said defendant as well the sum of five thousand dollars, lawful money, with interest from 1st Dec'r, 1858, his damages aforesaid by the jurors aforesaid in form aforesaid assessed by reason of the premises set forth in the *the* first count of his declaration, as also the several sums of money, his damages aforesaid by the inquisitions aforesaid in form aforesaid found, and also the sum of two hundred and one dollars and sixty cents by the court now here adjudged unto the said plaintiff for his costs and charges by him about his suit in this behalf expended. And the said defendant in mercy, &c.

Test: JNO. A. SMITH, *Clk.*

UNITED STATES OF AMERICA:

The President of the United States to the judges of the circuit court of the District of Columbia, sitting for the county of Washington, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court before you, or some of you, wherein Zepheniah Jones is plaintiff, and John P. Ingle, executor of Ann R. Dermott, is defendant, a manifest error hath happened to the great damage of the said defendant, as by his complaint appears; we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday in December next, in said Supreme Court, to be then and there held; and that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error which of right, and according to the laws and customs of the United States, should be done.

Witness the Hon. Roger B. Taney, Chief Justice of said Supreme Court.
Issued the 8th day of March, 1862.

JNO. A. SMITH, *Clk.*

True copy. Test:

JNO. A. SMITH, *Clk.*

DISTRICT OF COLUMBIA, *to wit:*

The United States of America to Zepheniah Jones, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the District of Columbia, for the county of Washington, wherein John P. Ingle, executor of Ann R. Dermott, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why judgment rendered against the said John P. Ingle, ex'or as aforesaid, should not be corrected, and why speedy justice should not be done to the parties in this behalf.

Witness the Hon. James Dunlop, chief justice of the circuit court of the District of Columbia, this eighth day of March, 1862.

JAMES DUNLOP.

Service acknowledged.

J. M. CARLISLE,
For Defendant in error.

29 Nov., 1862.

Know all men by these presents that we, John P. Ingle and Joseph Ingle, are held and firmly bound unto Zepheniah Jones in the full and just sum of five hundred dollars, lawful money, to which payment, well and truly to be made and done, we bind ourselves, and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this 7th day of March, 1862.

Whereas, lately, at a circuit court of the District of Columbia, sitting for the county of Washington, in a suit pending in the said court, wherein the said Zepheniah Jones was plaintiff, and John P. Ingle, executor of Ann R. Dermott, was defendant, judgment was rendered against the said defendant; and he having obtained a writ of error, and filed a copy thereof in the clerk's office of the said circuit court, to reverse the judgment in the aforesaid suit, and a citation, directed to the said Zepheniah Jones, citing and admonishing him to be and ap-

pear at a Supreme Court of the United States, to be holden at Washington on the first Monday in December next:

Now, the condition of the above obligation is such, that if the said John P. Ingle, executor as aforesaid, shall prosecute his writ to effect and answer all damages and costs if he fails to make his plea good, then the above obligation to be null and void; otherwise, to be and remain in full force and virtue in law.

JOHN P. INGLE. [SEAL.]
JOS. INGLE. [SEAL.]

Signed, sealed, and delivered in the presence of—
C. B. BAKER.

Approved.

JAS. DUNLOP.

Style of court.

DISTRICT OF COLUMBIA, *to wit:*

At a circuit court of the District of Columbia, begun and held in and for the county of Washington, at the city of Washington, on the third Monday of January, being the twentieth day of the same month, in the year of our Lord one thousand eight hundred and sixty-two, and of the independence of the United States the eighty-sixth.

Present: James Dunlop, chief judge; the Hon. James S. Morsell and Wm. M. Merrick, assistant judges; Ward H. Lamon, esq'r, marshal; John A. Smith, clerk.

In the records of the proceedings of said court, among others, are the following, to wit:

Parties.

ZEPHENIAH JONES
against
JOHN P. INGLE, ex'or of Ann R. Dermott.

Be remembered that heretofore, to wit, at the January term, eighteen hundred and sixty, of this court, the plaintiff, by Joseph H. Bradley and James M. Carlisle, esquires, his attorneys, filed in court here the following mandate:

Mandate.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable judges of the circuit court of the United States for the District of Columbia, greeting?

Whereas, lately, in the circuit court of the United States for the District of Columbia, before you or some of you, in a cause between Zepheniah Jones, plaintiff, and Ann R. Dermott, defendant, the judgment of the said circuit court was in the following words, viz:

"Therefore it is considered by the court here that the said plaintiff recover against the said defendant, as well the sum of five thousand dollars, lawful money, with interest from 1st Dec'r, 1858, his damages aforesaid, by the jurors aforesaid, in form aforesaid, assessed by reason of the premises set forth in the *the* first count of his declaration, as also the several sums of money, his damages aforesaid, by the inquisitions aforesaid, in form aforesaid found; and also the sum of two hundred and one dollars and sixty cents, by the court, now here adjudged unto the said plaintiff for his costs and charges by him about his suit in this behalf expended; and the said defendant in mercy, &c.," as by the inspection of the transcript of the record of the said circuit court, which was

brought into the Supreme Court of the United States by virtue of a writ of error, agreeably to the act of Congress in such case made and provided, fully and at large appears.

And whereas, in the present term of December, in the year of our Lord one thousand eight hundred and fifty-nine, the said cause came on to be heard before the said Supreme Court on the said transcript of the record, and was argued by counsel. On consideration whereof, it is now here ordered and adjudged by this court that the judgment of the said circuit court in this cause be, and the same is hereby, reversed with costs; and that the said defendant, Ann R. Dermott, recover against the said plaintiff, Zepheniah Jones, twenty dollars for her costs herein expended, and have execution therefor.

And it is further ordered that this cause be, and the same is hereby, remanded to the said circuit court, for further proceedings to be had therein, in conformity to the opinion of this court.

FEB. 20th.

You therefore are hereby commanded that such execution and further proceedings be had in said cause, in conformity to the opinion and judgment of this court, as according to right and justice and the laws of the United States ought to be had, the said writ of error notwithstanding.

Witness the honorable Roger B. Taney, Chief Justice of said Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and fifty-nine.

Costs of defendant.

Clerk, paid by pl'ff.

Attorney, $20.

$20 taxed by Wm. Thos. Carroll, clerk of the Supreme Court of the United States.

And the said Ann R. Dermott, being called, appears in court here by Robert J. Brent, esquire, her attorney; and thereupon by order of the court, on motion of the parties, by their said attorneys, the papers in the original suit are brought forward and filed in this cause; and it is further ordered that the said plaintiff have leave to file an amended or new declaration; and thereupon the said plaintiff, by his attorneys aforesaid, declared against the said defendant in the plea aforesaid, in the form following, to wit:

Amended nar.

WASHINGTON COUNTY, *sct.*:

Ann R. Dermott, late of the county aforesaid, was summoned to answer unto Zepheniah Jones in a plea of debt.

And thereupon the said pl'ff, by Jos. H. Bradley, sr, and Carlisle Maury, his attorneys, complains—

For that whereas heretofore, to wit, on the first day of July, in the year one thousand eight hundred and fifty-two, at the county aforesaid, the said defendant was indebted unto him, the said plaintiff, in the sum of twenty-five thousand dollars for the price and value of certain work and labor done and performed, and certain materials furnished by him to her, the said defendant, at her special instance and request, and which work and labor and materials were used and employed by her, and about the erection of certain buildings, for her, the said defendant, at the county aforesaid.

And in a like sum of money for so much money paid, laid out, and expended by the said plaintiff, for the use of the said defendant, at her special instance and request. And in another like sum of money for so much money by the said defendant had and received to the use of the pl'ff, which said several sums of money were to be paid by her, the said defendant, to him, the said plaintiff, when she, the said defendant, should be thereunto requested.

Whereby and by reasons of the said several sums of money being and remaining wholly unpaid, an action hath accrued to the said plaintiff to demand and have of the said defendant the said sums of money above demanded.

Yet the said defendant, although often thereto requested, to wit, on the day and year aforesaid, at the county aforesaid, and often afterwards, hath not paid the said sums of money, or any part thereof, but the same, or any part thereof, hath hitherto refused and still doth refuse to the damage of the pl'ff $40,000, and therefore he brings suit.

BRADLEY & CARLISLE & MAURY,
For Pl'ff.

Rule, plea, and imparlance.

And the said plaintiff, by his attorneys aforesaid, prays that the said defendant may answer to the declaration of him, the said plaintiff, in the plea aforesaid, or judgment by the court will be rendered against her in default thereof. Thereupon the defendant, by her attorney aforesaid, defends the force and injury when and so forth, and prays leave of the court here to imparle until the first Monday of May next, and then to answer to the declaration aforesaid of the said plaintiff, in the plea aforesaid; and to her it is granted. The same day is given to the plaintiff then and there, and so forth.

May term, 1860.

At which mentioned first Monday of May, in the year one thousand eight hundred and sixty, come again into the circuit court here, as well the said plaintiff, by his attorneys aforesaid, as the said defendant, by her attorney aforesaid; and the said plaintiff, by his attorney aforesaid, file in court here, in said case, the following bill of particulars:

Bill of particulars.

Miss Ann R. Dermott to Z. Jones, Dr.

For the following estimate of work and material furnished in the erection of the Avenue House and the warehouse attached, situated on the land cornering on Market space and 7th street west, square No. 432, in the city of Washington, made from actual measurements and surveys, to wit:

To 1,498 cubic yards of excavation, made for cellar vaults, basements, stores, and foundation trenches, at 25c	$374 50
223½ perches of blue rock, foundation walls, at 350c	782 25
603 $\frac{58}{100}$ brick, all hard, furnished and laid, at 13 dolls	7,839 75
252 feet sup'l of frieze to front cornice, of 1½ projection, at 10c	25 20
175 feet lin'l of full moulded brick cornice, of two fronts, at 150c	262 50
2 cast-iron ornamental leffeits, at the angles of cornices, at 200c	6 00
102 ft. lin'l of plain brick cornice, of 2 projections, at 12c	12 24
28 ft. lineal coping to 9″ fence and parapet walls, at 12½	2 50
80 ft, lin'l walls cut up under slate, and 2 course slanting, at 12c	9 60
40 $\frac{350}{1000}$ brick, allowed for half openings, work only, at $3 50	141 22
14 suspension tirmmer arches and material, at 2 75	38 50
157 feet lin'l, of 2″x¼′ wrought iron, curved bars, to do., at 27c	42 50
27 common trimmer arches, including the material, at $1 25	33 75
42 hearths laid, including the material, at $1 25	52 50
42 fireplaces, cased, at $1, $42; 62 jack arches, at 75c., $46 50	88 50
12 North river stone door sills, set, at 50c	6 00

To 9 door sills of granite, set, at 75c., $6 75; 4 do., large size, at $1, $4	$10 75
114 stone window sills, set, at 50c., $57; 3 do., to side light windows, at $1, $3	60 00
356⅔ yards of brick paving to street fronts and areas, &c., at 70c	249 35½
190 feet lin'l of brick gutter, formed in pavement, at 4c	7 60
63 sup'l feet of gutter laid in cement, laid under kitchen floor, at 12c	7 56
817⅔ sup'l feet of stone pavements, laid in cellars, alley, &c., at 55c	449 78
64 plain marble heads, furnished for front window, at $4 50	288 00
64 do., from 2 to fifth story window, set in place, at 50c	32 00
59 marble window sills, furnished for fronts, at 400c	236 00
41 granite window sills, furnished for bas't and rear window, at $2 40	98 40
14 second-hand free stone, do., rear window, at $1 50	21 00
2 granite door sills, 4.7 in. x 12″ x 8″ and 8, 71c. each	17 42
	11, 195 40
To amount brought forward, $11, 195 40	
To 2 granite door sills, 5′ 0″ x 15″ x 8″, at $11 65	23 30
1 granite door sill, 3′ 4″ x 12″ x 8″, at	8 15
88⅓ lin'l of door sills of store fronts, 16″ wide, 8″ thick, dressed and set complete, at $2 31	204 05
71 7/12 feet lin'l of granite, 6″ x 8″, water table, at 100c	71 58
8 granite door sills to privies, 2′ 9″ x 10″ x 6″, at $4	32 00
2 granite platforms, 6′ 4″ x 6′ 3″ x 8″, at $62 31	124 62
1 granite platform, 6′ 0″ x 6′ 3″ x 8″, at $50	50 00
2 granite platforms, 6′ 6″ x 6′ 3″ x 8″, at $63 85	127 70
1 granite platform, under front steps, 7′ 6″ x 6′ 1″ x 8″ made in two pieces	64 22
145¾ ft. lin'l of coping to area wall, 12″ x 8″, at 200c	291 50
12 ft. sup. sinking on top of end copings for spout, stones, at 50c	6 00
188 ft. lin'l of 6″ curb stone, furnished and set, at 100c	188 00
This amount for granite work for the front entrance, steps prepared according to please, and specification, and partly set, but prevented from completing of, as by Miss Dermott's own order.	125 00
6⅓ feet of marble sill for front entrance, 17″ x 8″, at $4¼	26 56
2 marble plinths rebated and fitted to end of sills, at $4	8 00
44¼ feet lin'l of North river stone door sills furnished, at 30 c.	13 27½
25 sup'l jambs and lining, to coal slide in alley, at 60c	15 00
For the following estimate of carpenters' work, including the materials of every description, hauling and painting and glazing, viz:	
20 windows of fifth story, double box frames, 8/4 blinds, and inside trimmings, and painting and glazing complete, at $31 39/100	627 80
1 do., same description, on stories with circular trimmings	32 39
1 false frame, with blinds complete	11 12
2 windows of 12 light. 10″ x 12″, with blinds, &c., complete, at $20 16/100	40 32
18 windows, of 12″ 12″ x 16, of 4th story, complete, at $37 38/100	672 84
3 windows of 12″ x 16, of fourth, over warehouse, at $31 57	94 71
5 windows back of warehouse, without blinds, at $17 91	89 55

To 18 windows of 12 lights, 12″ x 18″, third story, complete, at $43 67	$786 06	
1 do., false frame, with blinds	15 24	
		14,944 38½
To amount brought forward	$14,944 38½	
To 1 false frame with blind of 4th story	13 18	
3 front windows of warehouse 3d story at $35	105 00	
5 back windows of warehouse 3d story at $21 $\frac{20}{100}$	106 00	
12 windows of the second story of 15 lights, 12 x 20, at $63 $\frac{25}{100}$	707 80	
3 windows front of warehouse, same size, at $46 $\frac{38}{100}$	139 14	
1 false window with blinds at	20 80	
15 hoods over second story, 15 light windows, at 175	26 25	
5 back windows 2d story of 12 lights, 12 x 20, complete, at $50 $\frac{25}{100}$	251 25	
3 sets of inside shutts to 15 light windows, complete, at $36 $\frac{62}{100}$	109 86	
5 windows in rear of warehouse with shutters, 12 lights, 12 x 18 sashes $33 90	169 50	
1 window at kitchen stairs of 12 light, 10 x 16, complete, at.	18 82	
4 windows of 1st story, 12 lights, 12 x 18, complete, at $33 90	135 60	
2 windows, solid frames, 12 lights, 9 x 12, complete, at $20 00,	40 00	
9 windows, solid frames, 12 lights, 12 x 12, with shutters, &c., complete, at $23 67	213 03	
1 window of 12 lights, 9½ x 16, folding sash, on stairs at skylight	13 29	
2 windows, solid frames of 12 lights, 10 x 12, in warehouse front cellar, without shutters, at $7 44	14 88	
2 windows to back cellar, with sash and iron bars, at $12	24 00	
67 feet sup. of skylight sash, glazing and painting over the main staircase, at 20c. pr. ft.	13 40	
23 ft. of grooved and tongue skylight frame, at 12c.	2 76	
166 ft. of dressed grooved and tongue and splayed lining to do. at 13c.	21 58	
45 lights of 12 x 18 glass and glazing to skylight at 40 c.	18 00	
33⅓ yards of 3 coat painting to do., at 22c	7 33	
181½ feet sup. of skylight for use of middle store, including glass, glazing, and painting, at 47c	85 30	
4 doors of warehouse, front, complete, at $57 96½	231 86	
2 rear doors of warehouse, complete, at $40 97½	81 95	
2 doors in the rear of avenue stores with inside trimmings, complete, at $41 90.	83 80	
3 large doors of east store front of Ave. House, at $67 18	201 54	
South store fronts, embracing the three stores, and including every expense except the iron cols. and iron girder over do.	997 44	
		18,847 74½
Amount brought forward	$18,847 74½	
To 956 feet of ¾ board partition in stores, at 9 c.	86 04	
80 feet of ceiling strips at 6c., 480c.; 182⅔ yards painting of do. 3c., 622c.	40 11	
2 doors and frames complete to front cellar of warehouse, at $9 44.	18 88	

To 1 folding sash door with portable shutters in bas't store, at..	$36 89½
To 3 panel doors with frames complete in stores and kitchen, at $14 73.....	44 19
To 2 sash doors and jambs leading to space under skylight....	29 46
To 3 small panel doors and frames leading from the kitchen into the vault under the alley at $9 31½.....	27 94
To 1 battened door and jambs leading to back cellar.....	6 50
To 3 doors and frames to vaults under south pavement, at $6 50..	19 50
To 45 ft. sup. jamb casings to the two openings in the wall between back and front rooms of kitchen at 20c.....	9 00
To 1 panel door, frame, and transom, at the landing of the kitchen steps directly on the alley, at.....	21 88½
To 1 do. do. do. leading to balcony over alley, at.....	26 13½
To jambs, architrave, pilasters, consoles, cornice, pediment, and lintel of front entrance.....	90 83
To 3 rises of steps ascending to vestibule door at 3 42½c.....	10 27½
To 1 vestibule door and trimmings, complete.....	117 18
To 1 panel door, frame, transom, and trimmings under main staircase, complete, at.....	24 31
To 3 sets of folding and sliding doors 12′ 4″ x 10′ 0″ of the principal story with brass rails and sheeves, complete, $138\frac{20}{100}$....	414 60
To 4 panel doors of principal story 7′ 4″ x 3′ 2″ with $\frac{8}{4}$ opened and rebated jambs 14″ wide, trimmed with $\frac{6}{4}$ opened pilaster and full entablature, grained, and furnished with white mineral knobs and silvered garnature, $45\frac{79}{100}$.....	183 08
To 8 panel doors same description with 6″ jambs, at $41\frac{38}{100}$	331 04
To 2 folding doors of closets at end of dining room, $\frac{6}{4}$ thick, single moulded and trimmed as above, one side, at $28\frac{97}{100}$	57 94
To 29½ feet sup. $\frac{6}{4}$ shelving in said closets, at 16½c.....	4 87½
To 79 " " $\frac{4}{4}$ " " " at 12c.....	9 48
To 4 x 12 N. C. posts and lintels under the iron girder across the entrance passage under the division wall, together with the jambs, pilasters, crown moulds, and base blocks, and painting, complete, at.....	34 77
To 4 doors of 3d story, $\frac{8}{4}$ thick, double moulded, $\frac{8}{4}$″ 14 jambs, with transom sash, trimmed with plain pilasters, beaded grounds, dental crown mould, mortice lock, as above, at $37 28....	149 12
To 8 doors of the same description, with 6″ jambs, at $32 63	261 04
To 1 set of sliding and folding doors of 3d story, 12′ 0″ x 9′ 0″..	101 43
To 1 set of folding doors, 11′ 9″ by 10′ 2″ of " at.....	94 45
To 4 doors of 4th story, 14″ jambs and transom, $\frac{8}{4}$″ thick, double moulded, trimmed with beaded grounds, plain pilasters, crown moulds, mortice locks, with dark mineral knobs and bronze garnature, $31\frac{20}{100}$	127 60
To 1 panel door, with 14″ jambs, at end of the passage and leading to water-closets, no transom.....	27 56
To 8 doors with transoms, as above, with 6″ jambs, at $27\frac{84}{100}$....	222 72
To 4 doors of 5th story, 14″ jambs, transoms, &c., as above, $31\frac{62}{100}$.....	126 48
To 12 doors of 5th story, 6″ jambs, transoms, &c., as above, at $27\frac{84}{100}$.....	344 08
To 2 doors of 5th story, 6″ jambs, without transoms, at $24\frac{45}{100}$...	48 90
To 1 panel door with frame, sill, transom, sash, and trimmings one side, leading into roof, at.....	24 26
To 3,204 ft. sup'l all heart N. C. floor and sleepers, laid in the base't of Avenue House, at $10\frac{66}{100}$ per square.....	341 54

To 28,530 feet sup'l of N. C. joists, part 3″ x 12″, part 2½″ by 12 and spaced, part 14″ from centre, and part 15″, and averaged from 1 to 5 stories elevated, at 8 95 p'r square $2,553 43
To 27,365 feet of $\frac{5}{4}$ inch N. C. floor, laid at 8 25 ..... 2,257 61
To 1,092 feet sup'l of 3″ x 12″ N. C. joists, under the roof of the rear portion of the warehouse, 5th floor, at 8 95 ..... 97 73
To 5,358 feet lin'l of 3 x 12 N. C., extra joist under partitions and to the trimmers, at 11¼c. per ft 602 77
Te 208 feet lin'l of double framed trimmer, 30c 62 40
To 1,338 feet lin'l double street bracing to joists, at 9c 120 42
To 5,251½ feet sup'l of 2½″ x 6″ N. C., ceiling joists, at 5½c 269 11
To 1,213 feet of 3″ x 4″ close sheathed roof over wall house, at 8c 97 04
To 4,656 feet of double pitch main roof rafters, 3″ x 6″ N. C. spaced 15″ from centres and close sheathed, at 10c 465 60
To 1,111 feet sup'l of hip and valley roofing, at 11 dols 122 21
To 140 " " framed and trussed gallows to support part of the main roof over warehouse, at 15c 21 00
To 12 f't lin'l of 1¼″ bolts and nuts to do. at 50c 6 00
To 290 f't sup'l of framed and braced wall under the west eave of the roof over warehouse, at 19c 55 10
To 290 f't sup'l $\frac{4}{4}$ close sheathing to warehouse, 4¼c 12 32½
To 4 straps and bolts to do., at 1 50 ..... 6 00
To 71 f't lin'l of rough verge board, at 4c 2 85
To 1,626 tin roofing and covering of framed wall, at 9c 146 34
To 994$\frac{10}{12}$ f't $\frac{5}{4}$ slat flooring over tin roof and sleepers, at 5½ 54 72
To 120 f't lin'l dressed and cornered 5 x 5 N. C. posts on roof, at 17c 20 40
To 13 pins for clothes-lines put through posts, at 6c 1 80
To 202 ft lin'l of $\frac{5}{4}$ slat rails nailed round posts, at 8c 16 16
To 6,300$\frac{2}{3}$ ft. Susquehanna gauged slating, at 9c 567 06
To 87 ft sup'l of copper valley gutters, at 40c 34 80
To 99 " lin'l of " flashings, at 26c 25 74
To 154 ft. lin'l of 2″ x 7″ dressed and painted snow fenders at 18¾c 28 87
To 75 ft. lin'l of 2 x 5 dressed and painted snow fenders, at 17c ... 12 75
To 50 wrought iron knees furnished and put on for snow fenders, at 30c 15 00
To 170 ft. lin'l of large moulded eave gutter, at 30c 51 00
To 134$\frac{4}{12}$ ft. lin'l, of large plain back " at 20c 26 87
To 392 " " 4″ down spouting, at 20c 78 40
To 4 cistern heads, at $2, $8; 3 cast-iron leaders, at $2 50, $7 50 15 50
To 116 yards of two coat painting to spouts and gutters, at 16c ... 18 56
To 198$\frac{7}{9}$ yards of four coat painting to front brick cornice, at 37c. 73 45
To 9,906 yards sup'l of common 3″ x 4″ partitions at 2$\frac{38}{100}$c 235 76
To 3,768$\frac{4}{12}$ " " trussed " " at 3c 113 05
To 437 " " circular studding to staircase, at 5c 21 85
To 424 " lin'l of $\frac{4}{4}$ square edge skirting of bas't, at 11c ... 46 64
To 321 " " moulded edge do. 7″ wide of stores, at 14c ... 44 94
To 614¼ " " open and moulded do., 12″ wide of parlor story, at 28c 171 92
To 779 yards of plain moulded do. 11″, of 3d story, at 25c 194 75
To 1,948$\frac{8}{12}$ " " " 10″, of 4th & 5th story, at 24c. 467 68
To 150 joist holes, cut in old west wall for joist at 10c 15 00
To 89 rises of stairs of warehouse, averaging 3′ 5″, at $1 25 ..... 111 25
To 230 f't sup'l, of $\frac{5}{4}$ dressed, tongued and grooved, and beaded boarding to the first flight of do., at 12c 27 60
To 1 buttoned door, formed in do., hinged and bolted 1 40

To 112 f't of square newell to stairs, and pine handrails at 10c... $9 70
To 2 staircases of avenue stores, of 13 rises each, with mahogany handrail, turned ballusters, facias, nosing, turned newells, painting, and varnishing 167 04
To 100 rises of private stairs leading from kitchen to the 5th story, with mahogany handrail, plain pine ballusters, turned maple newells, boxed skirtings, and painting of do., $3 47/100 ..... 347 00
To 299¼ f't of sup'l 5/4 dressed, tongued, and grooved boarding to do., 10c 29 92½
To 64 rises of geometrical staircase of 3′ 6″ step and 3 f't cylinder, with mahogany handrail, turned and moulded oak ballusters, opened and moulded box skirtings, plain brackets, ornamented facias and nosings, including painting and varnishing, at $9¼..... 592 00
To 45 f't sup'l of circular face, panelled and moulded 8/4 spandrail under 1st story of stairs, at 152c..... 68 40
To 36⅔ " " plain, panelled and moulded spandrail, at 43c 15 77
To 744 " " 5/4 dressed, tongued and grooved, and battened lining of dumb waiters, at 10c..... 74 40
To 7 7/12 " lin'l, of nosed and moulded cap to top of do., at 12c ... 91
To 11 " sup'r, folding battened door to top, at 15c., $1 65; 2 p'r butts, 30c., 60 ..... 2 25
To 3 folding 6/4 panelled and moulded dooors to dumb waiter, including casings, hardware and painting, at $8 49..... 25 41
To 1 portable tray, at $2 31; iron frame, gearing, and rope, $35.. 37 31
To 1 reservoir suspended to the ceiling of 5th story, over the private stairway, made of dressed 8/4, 6′ 8″ x 4′ 6″ x 3′ 0″, including six 7/8 iron bolts and painting, but not the plumbing..... 27 27
To 1 do., to ceiling over ladies' water-closets, 10′ 00″ x 4′ 6″ x 3′ 0″ 40 30
To 714 f't of 5/4 dressed partition, forming passage to water-closets, including the painting of do., one side, 12 4/9c 88 85
To 136 f't of floor and ceiling strip to partition, at 3c..... 4 08
To 233 " 4/4 partition, dividing water-closets, dressed both sides and painted, 14 4/9c. per f't..... 33 65 5/9
To 4 water-closets and 1 slop-closet, fitted up with seats, rises, falls, skirting, doors, and painting 45 36 3/9
To 4 windows to water-closets of 3 lights, 10″ x 12″, hinged sash and stationary mortice blinds, trimmings and painting, $7 37/100 .... 29 48
To 8 panel doors and frames of yard privies, $11 94/100 ..... 95 52
To 8 privies fitted up with seats, rises, floors, fall, boxes, and painting and partitions and roofing, $11 8/100 ..... 88 64
To 2 frames and doors at the ends of privy boxes, $3..... 6 00
To 2 small ventilating windows to privies, $1..... 2 00
To 1 large double gateway, leading to the yard privies and back yard of warehouse, complete 18 43
To 125 f't sup'r close board fence, double face, with facias and base boards on both sides, and capped, 7½c..... 9 37½
To 231½ f't sup'l of heart, N. N. flooring and sleepers to the balcony leading to the 2d story privies, at 12c..... 27 78
To 8 wrought-iron bars, 7′ 0″ x 2¼″ x 5/8″, furnished and spiked to the joist of warehouse to support said balcony, at $3 22/100 ..... 25 76
To 444½ f't sup'l 8/4 cut and thrust blind screen to do., at 31c..... 133 35
To 79 f't lin'l, of 1½″ x 4,″ plain cap to screen, at 8c..... 6 32
To 99 yards of 3-coat green painting to blind screen, at 50c..... 45 00
To 71½ f't sup'l of balcony floor, leading to roof of warehouse, at 15c. 10 72½
To 5 wrought-iron bars to support do. with bosses on do., at 4 50.. 22 50
To 74½ feet lin'l, of iron railing, with fancy cast iron ballusters and wrought rails, posts and braces to the above, at 2 30..... 56 35

To 19 yards of painting to the above, at 16c	$2 04
To 343 f't sup'r of floor, ceiling, and sleepers of east and south balcony, including lumber and nuts, at 29¼c	100 33
To 94⅜ f't facia to do., at 13c., 1 23; 5½ f't of circular do., at 33c., 1 82	14 13
To 9 iron bars of wrought iron, with bosses and bolts to do., at $4½.	37 50
To 6 ornamental cast-iron brackets under east balcony, $5	30 00
To 103½ feet, lin'l, of railing to the above balcony, with wrought-iron rail, posts, and braces, and cast fancy ballusters, at 2 30	238 05
To 131½ yards, 2-coat painting to the above iron railing, brackets and oiling of the floor, 16c	21 04
To 46 yards 3-coat painting to the ceiling and facia, at 22c	10 12
To 1 kitchen dresser, 7′ 6″ long, with closet, panel doors under the 1st shelf, including the painting	16 48
To 1,093½ f't lin'l, of ⅝ rebated angle strips, at 8c	87 48
To 1,187 f't, sup'l, battening to the 9″ west wall above dining-room, 24c	26 71
To 2 trap doors near reservoirs, at 200c	4 00
To 1 wood mantel of Lefever pattern, boxed and painted	10 00
To 10 wood mantels of 3d story, boxed and arched, friezed, $9	90 00
To 10 wood mantels of 4th story, boxed and arched, friezed, $8	80 00
To 14 wood mantels of 5th story, boxed and arched, friezed, $5 50	77 00
To 6 feet gressett casing to entrance steps at east sto ceiling, 20c	1 20
To 41 trimmer centres for hearths, at 60c	24 60
To 112 feet, sup'l, of cast-iron posts to east store front of avenue stores, at 1 12½c. per foot	126 00
To 35⅛ f't, sup'l, of moulded and dentaled of cast-iron, to do., at 100c.	35 33
To 17⅜ f't, lin'l, of 14″ cast-iron ribbed girder to do., at 2 50	44 17
To 128 1/2 f't, sup'l, of cast-iron posts to front of warehouse, at 1 12½c.	144 10
To 48⅝ f't, sup'l, of cast-iron cornice to do., at 100c	48 67
To 23⅓ f't lin'l, of 14″ cast-iron ribbed girder to do., at 2 50c	58 33
To 45½ f't, lin'l, of 14″ cast-iron ribbed to do., south front, at 2 50.	113 75
To 40 f't, lin'l, of 9″ cast-iron ribbed girder at skylight, at 250c	80 00
To 23 f't, lin'l, of 14″ cast-iron girder over the alley, under the front and division walls, at 2 50c	57 50
To 17 f't, lin'l, 14″ do. over the main entrance in the division wall, and in division wall, 4th floor, at 2 50	42 50
To 11½ f't, lin'l, 9″ do. over the alley, under the 9″ west wall, at 200c	23 00
To 46⅔ f't, lin'l, of cast-iron col., of 7″ diameter at skylight, at 1 37½	64 17
To 55⅔ f't, lin'l, of cast-iron col., 8″ diameter, south front, at 1 54½.	84 97½
To 70⅗ yards 3-coat bronze green to iron works, at 23c	23 36
To 5 cast-iron curbs, and covers to holes in vaults, at 2 50c	12 50
To 302 sup'l feet of slate laid in foundations, at 8c	24 16
To 37 lin'l " of 9″ slate " at 6c	2 22
To 3 marble sills of large side-light windows, $8 50	25 50
To 2 side-light window trimmings, on the outside, not embraced heretofore in the estimate of windows having pilasters and full entablature, at $21 48/100	42 96
To 1 side-light window outside trimmings of architrave and band moulding	8 90
To 3 new marble mantles, furnished and set in place	150 00
To 3 old marble mantles repaired and put up, $10	30 00
To 7 ornamental cast-iron window guards, at $4	28 00
To 5 cast-iron window sills, at 100c	5 00

To 53¼ f't, sup'l, of wrought-iron gratings, covering the spaces over the front area of warehouse not taken up by the platforms, at 100c.	$53 25
To 132½ f't, lin'l, of wrought-iron railing to the areas of the Avenue House, at $3	398 50
To 121⅝ yards of painting to the above iron work, at 16c	19 45
To 3 new grates furnished and set to parlors, $20	60 00
To 2 old grates put up in " $5	10 00
To 48 bells, secret, hung in metallic tubes, at 7 dol's each	336 00
To this amount of plumber's work and material in lining with sheet-lead two reservoirs, four water-closets, with traps and soil pipes, lead pipes conducting the water into the kitchen, third, fourth, and fifth stories, with cocks; kitchen sink, lead receivers and waste pipes, and cast-iron pipe sewer to connect with the sewer.	449 20
To 737 yards of oiling and pencilling of brick fronts, at 25c	184 25
To 7,649 yards of plastering, 3-coat work, hard finish, at 28c	2,141 72
To 404⅓ yards of half open'gs, work only, at 14c	56 57
To 80 wall irons to tie walls to floors, at 50c	40 00
	39,864 28

Notice of recoupement.

And the defendant, by her attorney aforesaid, files in court here the following notice:

ZEPHANIAH JONES }
vs.
ANN R. DERMOTT. }

To Zephaniah Jones, esq'r, the above plaintiff:

Take notice that on the trial of the above cause I will claim to discount or recoupe from any cause of action you may establish (if any such can be established) against me, the sums of money, damages and claims hereinfter stated, that is to say:

1st. The cost and expense incurred by me in repairing and reconstructing my building at the southeast corner of 7th street and Market space, in Washington city, which you undertook to construct and complete for me, as stipulated in our written contract dated the 22d day of April, 1851, and which building, by and through your omissions and default, became dilapidated, cracked, and damaged before the same was completed and delivered over by you under said contract	$12,000 00
2d. To loss of rents for stores and warehouse not completed and delivered over by you on the 1st October, 1861, as stipulated on your part, in your written agreement with me aforesaid, for a long space of time, to wit, three years	6,000 00
3d. To loss of rent for hotel part of the building, hereinbefore referred to and described, and of warehouse in second story of said part, and which were not completed and delivered over by you on the 1st December, 1851, as stipulated on your part in your contract with me as aforesaid, for a long space of time, to wit, ———	4,466 66⅔
4th. Value of materials of old buildings used by you in construction of building referred to in aforesaid written contract	6,000 00
Total	28,466 66⅔

R. J. BRENT & J. C. BRENT,
For ANN R. DERMOTT, *the Defendant.*

Non assumpsit.

And the said defendant, by her attorney aforesaid, as before, defends the force and injury, when, and so forth, and saith that she did not assume upon herself in manner and form as the aforesaid plaintiff above against her hath declared, and of this she puts herself upon the country; and the said plaintiff, by his attorneys aforesaid, in like manner and so forth; therefore, let a jury thereon appear before the court here on the third Monday of October next, by whom and so forth, and who; neither and so forth, to recognize and so forth, because as well and so forth; the same day is given to the aforesaid parties then and there and so forth.

October term, 1860.

And now, to wit, the said third Monday of October, in the year of our Lord one thousand eight hundred and sixty, comes again into court here as well the said plaintiff, by his attorneys aforesaid, and the said defendant doth not come; and the said plaintiff suggests to the court here that after the last continuance of the plea aforesaid, and before this day at the county aforesaid, the said defendant departed this life, and the same is not denied. Whereupon, on motion of the said plaintiff, by his attorneys, leave is given by the court to the said plaintiff, according to the act of assembly in such case made and provided, to issue summons returnable to the next term of the court to John P. Ingle, the executor of the last will and testament of the said Ann R. Dermott, the defendant, to appear and defend in the plea aforesaid, and further process of and upon the premises aforesaid, by order of the court is continued until the third Monday of January next, and the same day is given to the said plaintiff then and there, and so forth.

Jan'y term, 1861.

And which said third Monday of January, in the year of our Lord one thousand eight hundred and sixty-one, comes again into curt the said plaintiff, by his said attorneys; and now here also comes the said John P. Ingle, the executor as aforesaid, in pursuance of said summons by Robert J. Brent, esquire, his attorney, and brings into court here the letters testamentary, by which it appears to the court here that he, the said John P. Ingle, is the executor of the said testament and last will, and have the execution thereof, &c. Whereupon the said John P. Ingle, executor as aforesaid, by his said attorney, offers himself ready to defend the said plea in the premises aforesaid. And thereupon, with the consent of the said parties by their attorneys, and by order of the court, said cause is continued until the first Monday of May next.

May term, 1861.

At which said first Monday of May, in the year of our Lord one thousand eight hundred and sixty-one, comes again into court here as well the said plaintiff as the said defendant by their attorneys aforesaid. And thereupon, with the consent of the said parties by their attorneys aforesaid, and by order of the court, the said cause is continued until the third Monday of Octocer next.

Octo. term, 1861.

And now, to wit, the said third Monday of October, in the year of our Lord one thousand eight hundred and sixty-one, come again into court here, as well the said plaintiff, by his attorneys aforesaid, as the said defendant by his attorneys aforesaid; and the said defendant, by his attorney aforesaid, withdraws the plea of non assumpsit, and comes and defends the wrong and injury when and so forth, and says that as executor aforesaid he does not, nor did the said

Ann R. Dermott in her lifetime, owe the said sums of money above mentioned, or any or either of them, or any part thereof, in manner and form as the said plaintiff hath above thereof complained; and of this the said defendant puts himself upon the country, and the said plaintiff, by his attorneys aforesaid, doth the like. And thereupon for trying the issue aforesaid it is ordered by the court here that twenty persons from the panel of petit jurors be drawn by ballot, according to the act of assembly in such case made and provided; and thereupon the twenty persons being so drawn by ballot and written upon two lists, one of which said lists is delivered to the counsel of the respective parties, and the counsel for each of said parties having strucken out four persons from the said lists, thereupon the remaining twelve persons being called, come, to wit:

Jury.

1. William Van Riswick,
2. Eustace E. O'Brien,
3. Hanibal C. Addison,
4. Joseph M. Dorwing,
5. David Jackson,
6. Rezin Arnold,
7. Alexander Lammond,
8. William Cooper,
9. Henry Korn,
10. George W. Godey,
11. Benjamin H. Clements,
12. George Gray.

Verdict.

Who being empanelled and sworn to say the truth in the premises, upon their oath, do say that the said Ann R. Dermott was in her life indebted to the said plaintiff in manner and form as the said plaintiff hath in pleading above complained against her, and they ascertain and assess the damages of the plaintiff due by the intestate in her lifetime to be twenty-two thousand one hundred and forty-nine dollars, with interest on twenty thousand one hundred and thirty-six dollars from the fifth day of April, in the year eighteen hundred and fifty-two.

Judgment.

Therefore, it is considered by the court that the said plaintiff recover of the said defendant, as well the said sum of $22,149, with interest on $20,136 from the 5th day of April, 1852, so as aforesaid found by a jury sworn in the premises, as the sum of $127\frac{12}{100}$, for his costs and charges by him about his suit in this behalf laid out and expended, to be levied of the proportion of the goods and chattels which were of the said Ann R. Dermott at the time of her death, and which are or have been in, or shall hereafter come to, the hands of the said defendant to be administered, and which may be subject to the said damages, costs, and charges in a legal course of administration.

Referred to auditor.

And because the amount of assets in the hands of the said defendant, and just claims against the deceased are unknown to the court here, therefore, William Redin, esquire, is appointed by the court here, auditor to ascertain the sum for which judgment shall be given to the said plaintiff in this behalf, and that the said auditor having regard to the amount of assets in the hands of the said defendant, and the debts due to other persons, shall make his report thereof to the court here; and said cause was by consent of the parties and by order of court continued until the third Monday of January next.

January term, 1862.

And now, to wit, the said third Monday of January, in the year of our Lord one thousand eight hundred and sixty-two, comes into court here the parties

aforesaid, by their attorneys aforesaid, and the auditor, to whom the said case had been referred, makes his report to the court here in manner and form following, to wit:

Auditor's report.

ZEPHANIAH JONES
ag't
JNO. T. INGLE, ex'or of Ann R. Dermott. } Judgment in circ't c't, D. C.

Reference to ascertain the proportion of assets to which the above judgment is entitled in the personal estate.

Dr. Inventory: Appraisement of furniture		$247 52
" of 2 Calif'a bonds		940 00
" 2 Davenport, do		750 00
" 18 do		6,750 00
" 20 coupons of do		450 00
Rent collected of Carter, due in Miss Dermott's life		72 22
Do. of J. H. King " " "		150 00
Cash of C. Andrews		4 23
" for 2 Calif'a coupons		32 55
" 2 do		31 50
" 2 do		31 85
		9,459 87
Cr. Loss on Davenport coupons	$45 00	
Do. on sale of Calif'a bonds	180 67	
Do. on sale of doors, &c	2 65	
	228 32	
Allowances in full, advertising adms'n 2 25, appraisers 25c	2 50	
House rent	68 06	
Servant's wages	12 00	
Do	27 00	
Register's fees	25 72	
For taking care of furniture	35 00	
Removing doors	1 00	
R J. Brent's fee in Sup. Co't, Wallack's case	200 00	
Funeral expenses	209 00	
Car'd forw'd	808 60	9,459 87
Bro't forward	808 60	9,459 87
Chancery testimony	111 84	
J. A. Smith's fees	43 04	
Same—Jones' case	11 70	
Marshal's fees, same case	15 00	
Carroll's, Wallach's case	58 10	
J. C. Brent in Jones's case in cir't co't	75 00	
R. J. Brent in do., $150 his fee, and $14 paid by him to witn's, and printing	164 00	
Def't's witnesses in do	31 25	
Plaintiff's costs in do	127 12	
Executor's com'n on $1,731 95	173 19	
Auditor's fees	23 25	
		1,642 09
		7,817 78

Which consists of the following on hand, viz: 2 Davenport bonds, not convertible at present	$750 00	
18 do	6,750 00	
And the furniture, which has been delivered by the ex'or to the specific legatee, but which is liable with the other personality to the debts, and must be considered undisposed of and in the hands of the ex'or	242 52	
		$7,742 52
Dr. Balance for distribution		75 26
The debts Z. Jones, principal	22,149 00	
Interest from April 5th, '52, to 1st Jan., '62	11,764 25	
	33,913 25	
Other debts as per list annexed	35,421 03	
Total	69,334 28	

Of which those in said list marked I are secured by deeds of trust on the real estate of the intestate.

The eight bonds secured by deeds of trust to Rich'd Dement, of 31st Aug't, 1835, and 1st Jan., 1838, are not included in the list of debts. The possession of the bonds cancelled is evidence of the payment of the debts, although the deeds are not released. If any claim should be made for them, it would be the duty of the executor to plead limitations.

The balance in the executor's hands of the personal estate in cash, does not exceed $\$75\frac{26}{100}$, which is not sufficient to meet the legal expenses to which he will be liable in the two pending suits of Jones and Wallach.

I report, therefore, that there are no personal assets at present available to be applied to the above judgment of Z. Jones; but the executor has in his hands $\$127\frac{12}{100}$, to pay the plaintiff's costs (Jones) in that suit.

W. REDIN, *Auditor.*

31 Jan., 1862.

Statement of claims against the estate of Anne R. Dermott, as presented to John P. Ingle, executor, with interest computed to 1st January, 1862.

I. Catharine Smith, bond, balance of principal		$2,300 00	
Interest from 8th July, 1860		204 12	
			$2,504 12
I. Elizabeth Bolton, bond, principal		1,000 00	
Interest from 1st July, 1860		90 00	
Ditto. note, principal		100 00	
Interest from 1st July, 1860		9 00	
			1,199
I. Bank of Metropolis, bond, principal		670 05	
Int. on $650, from 11 Nov'r, 1861		5 41	
			675 46
I. Neirnsee & Nielson, bond, principal		1,692 93	
Int from 7th April, 1853	$886 65		
Less paid by A. R. D	400 00		
		486 65	
			2,179 58
I. Garlington & Simpson, So. Carolina bond		8,000 00	
Int. at 7 p. c't, from 26th March, 1860		987 77	
			8,987 77

I. Mary E. Wilmer, bond, principal		$220 00	
Interest from 28th Jan'y, 1860		25 41	
Ditto. bond, principal		255 00	
Interest from 28th Jan'y, 1860		29 44	
Ditto. note, principal		125 00	
Interest from 28th Jan'y, 1860		14 43	
Ditto. note, principal		864 45	
Interest from 29th Dec'r, 1859		54 02	
Ditto. note, principal		581 46	
Int. from 29th Dec'r, 1859	$69 94		
Less paid by A. R. D	16 00		
		53 94	
			$2,223 15
Am't carried forw'd			17,769 08
Amount brought forw'd			17,769 08
I. George W. Tubman, bond, principal		3,000 00	
Interest from May 1, 1860		300 00	
Ditto. bond, principal		1,430 00	
Interest from Jan'y 28, 1860		165 16	
Ditto. note, principal		182 70	
Interest from May 1, 1860		18 30	
			5,096 16
I. Magruder D. Tubman, bond, principal		3,000 00	
Interest from 28th Jan'y, 1860		346 50	
I. Ditto. bond, principal		4,144 50	
Interest from 28th Jan'y, 1860		478 60	
			7,969 60
			30,834 84
W. R. Riley & Bro. account		62 90	
Interest from 1st June, 1861		2 21	
			65 11
Doct. B. Washington, account		60 00	
Interest from Oct. 1, 1854		26 10	
			86 10
Doct. A. Y. P. Garnet, account		80 80	
Interest from Sept. 1, 1861		1 60	
			81 60
J. S. Harvey & Co., note, $100, and acc't, $64 88		164 88	
Interest		24 80	
			189 68
A. Noer & Sons, account		93 50	
Interest from Sept. 1, 1861		1 87	
			95 37
Daniel Dowd, account		13 04	
Interest from Sept. 1, 1861		26	
			13 30
George E. Kirk, acc't, (query)			50 57
Samuel Kerby, account		41 25	
Interest from Jan'y 1, 1856		14 62	
			55 87
Harriet McCormick, note		55 48	
Interest from May 1, 1860		5 54	
			61 02
Amount carried forward			31,533 46

Amount brought forw'd		$34,533 46
Joseph Fry, account	$6 00	
Interest from July 1, 1861	18	
		6 18
George A. Smith, account	12 50	
Interest from Aug't 1, 1853	6 31	
		18 81
Ann McMeehan, note	400 00	
Interest from June 5, 1850	111 67	
		511 67
Gales & Seaton, account	481 68	
Interest from 1 Jan'y, 1856	173 40	
		655 08
John C. Brent, account	548 66	
Interest from July 1, 1861	16 46	
		565 12
Thomas C. Daniel, account	1,500 00	
Interest from Sept. 1, 1861	30 00	
		1,530 00
Eglantine Coke, notes and account	168 10	
Interest from May 10, 1860	16 40	
		184 50
Samuel Bacon & Co., account	12 26	
Interest from Sept. 1, 1861	24	
		12 50
Doct. F. Dawes, account	234 75	
Interest from Jan'y 1, 1850	168 96	
		403 71
		35,421 03

This statement exhibits the debts due by Anne R. Dermott at the time of her death, with interest thereon up to 1st Jan'y, 1862.

On all the debts secured by deeds of trust, and on some others, I have made payments, but such payments are not noticed in this statement.

JOHN P. INGLE, *Executor*.

Jan'y 21, 1862.

Judg't on auditor's report.

Therefore it is considered by the court here, that the said plaintiff recover against the said defendant the said sum of one hundred and twenty-seven dollars and twelve cents, by the said auditor, so as aforesaid ascertained to be of the goods and chattels, rights and credits, which were of the said Ann R. Dermott at the time of her death, and remaining to be administered in the hands of the said defendant, if so much thereof in his hands to be administered he hath; and if so much thereof he hath not, then to be levied of the proper goods and chattels of the said defendant. It is further considered by the court here, that the said plaintiff be entitled to such further sum as the court shall hereafter assess on discovery of further assets in the hands of the said defendant; and the said defendant in mercy and so forth.

Test: JNO. A. SMITH, *Cl'k*.

303 (A.)

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the Supreme Court of the United States for the District of Columbia, greeting:

Whereas, lately, in the circuit court of the United States for the District of Columbia, in a cause between Zephaniah Jones, plaintiff, and John P. Ingle, executor of Ann R. Dermott, defendant, the judgment of the said circuit court was in the following words, viz: "It is considered by the court that the said plaintiff recover of the said defendant, as well the said sum of $22,149, with interest on $20,136 from the 5th day of April, 1852, so as aforesaid found by a jury sworn in the premises, as the sum of $127\frac{12}{100}$, for his costs and charges by him about his suit in this behalf laid out and expended, to be levied of the proportion of the goods and chattels which were of the said Ann R. Dermott at the time of her death, and which are, or have been, or shall hereafter
304 come to the hands of the said defendant, to be administered, and which may be subject to the said damages, costs, and charges, in a legal course of administration," as by the inspection of the transcript of the record of the said circuit court, which was brought into the Supreme Court of the United States, by virtue of a writ of error, agreeably to the act of Congress in such case made and provided, fully and at large appears;

And whereas the death of John P. Ingle, executor of Ann R. Dermott, deceased, the plaintiff in error in this cause, having been suggested, and the appearance of JohnH. Ingle, administrator de bonis non, &c., having been filed, it was ordered by the court that he be made the party plaintiff in error in this cause, with leave to prosecute this writ of error;

And whereas, in the present term of December, in the year of our Lord one thousand eight hundred and sixty-four, the said cause came on to be heard before the said Supreme Court, on the said transcript of the record, and was argued by counsel: On consideration whereof, it is now here ordered
305 and adjudged by this court that the judgment of the said circuit court in this cause be, and the same is hereby reversed, with costs, and that the said defendant recover against the said plaintiff, Zephaniah Jones, twenty dollars for his costs herein expended, and have execution therefor. And it is further ordered that this cause be, and the same is hereby remanded to the supreme court of the District of Columbia for further proceedings to be had therein, in conformity to the opinion of this court, 9 Jan'y.

You, therefore, are hereby commanded that such execution and further proceedings be had in said cause, in conformity to the opinion and decree of this court, as according to right and justice, and the laws of the United States, ought to be had, the said writ of error notwithstanding.

Witness the honorable Salmon P. Chase, Chief Justice of said Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and sixty-four.

306 Cost of defendant:

Clerk		
Attorney	$20 00	
		20 00

Taxed by

D. W. MIDDLETON,
Clerk of Supreme Court of the United States.

(Duplicate.)

307 JONES
vs.
STRINGFELLOW. } 502.—Chancery.

And therefore the solicitor of the compl't before the court for publication of the testimony taken in the above-entitled case and returned into the clerk's office.

BRADLEY, *for Compl'ts.*

JONES
vs.
STRINGFELLOW. } 502.—Chancery.

It is ordered this 5th of June, 1866, in the above-entitled case, that complainant's notice for publication be heard on Friday next, the 8th inst., and that notice of said no*no*tice be given to the solicitors of record of the d'f'ts.

By order of the court.

308 ZEPH. JONES
vs.
H. STRINGFELLOW *et al.* } 502.—Equity docket, 7.

Upon the motion of Messrs. Bradley & Davidge, solicitors for complainant, it is, this 5th day of June, 1866, ordered that the above-stated cause be, and hereby is, set down for hearing.

By the clerk.

309 In the supreme court of the District of Columbia.

ZEPHANIAH JONES
vs.
HORACE STRINGFELLOW *et al.* } 502.—Equity dock., 7.

It is ordered this 5th of June, 1866, in the above-entitled cause, that complainant's motion for publication be heard on Friday next, the 8th instant, and that notice of said motion be given to the solicitors of record of the def'ts.

By order of the court.

A true copy.
Test: R. J. MEIGS, *Clerk.*

Served the within order on R. J. Brent and G. H. Morgan this 7th of June, 1866.

D. S. GOODING, *Marshal.*

310

311 In the supreme court of the District of Columbia, in equity.

ZEPHANIAH JONES
vs.
HORACE STRINGFELLOW *et al* } No. 502.

The petition of Zephaniah Jones, complainant in the above-entitled cause, respectfully shows, that, by the will of the late Anne R. Dermott filed therein, the real estate whereof she died seized was vested in her executors and the survivors and survivor, with power to lease the same and collect the rents and profits thereof, and also to mortgage or otherwise charge the same upon, and for certain specified trusts and purposes, one of which was the payment of all just debts; all which will more fully appear by reference to said will.

That after the death of John P. Ingle, the only executor that qualified under

said will, John H. Ingle was, on the 7th of February, 1863, appointed administrator and bonis non certu testamento annexo of the estate of said Anne R. Dermott; and that as such he took possession of said real estate and received the rents and profits thereof, claiming the right so to do by virtue of his said office, until the 26th of April last, when he was enjoined by the order of this
312 court passed on that day, in the cause of Dade, Hooe, and others against said Ingle, being No. 642, from the further collection of said rents and profits, and a receiver was appointed to take the possession and charge of said real estate, and to collect said rents and profits.

And your petitioner is advised that said Ingle did not succeed to the powers and trusts relating to said real estate, which are in and by said will devolved upon the executors, and he shows that a large portion of said rents and benefits have been diverted from said trusts and applied to the expenses of litigation relating to the personal estate of said testatrix. And your petitioner, in support of this averment, asks leave to refer to the sworn account of said Ingle, filed in said cause No. 642, and marked Def't's Exhibit 2.

That said real estate is situated in the portion of the city of Washington most desirable for business purposes, being at the corner of 7th street west and Market space, and is improved by a large hotel five stories high, and fronting on the latter street about fifty feet, and on the former about one hundred and fifteen feet, and that said property, exclusive of the three basement stores front-
313 ing on Market space, has yielded since the spring of 1863 the rent of only $2,100, whereas your petitioner avers the yearly value of the same to be from $7,000 to $8,000 per annum, and in support of this averment he files herewith, marked Z. J., Exhibit A, the affidavits of sundry respectable freeholders well acquainted with the property, and prays the same may be taken as part hereof.

Exhibit A.

DISTRICT OF COLUMBIA, *to wit:*

On the 29th day of May, A. D. 1866, before me, the subscriber, a notary public, in and for the District aforesaid, personally appeared Henry Thorn, J. A. Ruff, Douglas Moore, J. C. McKelden, M. G. Emory, W. B. Williams, J. W. Colley, H. F. Zimmerman, and J. H. Johnson, who, being duly sworn, declared that, we are familiar with the property known as the "Avenue House," fronting on Market space and Seventh street, and believe, from its position and locality for business purposes, together with the stores fronting on Seventh street, the property would and should have produced a rent equal to seven or eight thousand dollars per annum (exclusive of the three stores fronting on Market space) for the past four years.

[Stamp.]

314

HENRY THORN.
J. A. RUFF.
DOUGLAS MOORE.
J. C. McKELDEN.
M. G. EMORY.
W. B. WILLIAMS.
J. W. COLLEY.
H. F. ZIMMERMAN.
J. H. JOHNSON.

Subscribed and sworn to before me.

JOHN F. CALLAN, *Notary Public.*

That, as your petitioner is informed and believes, said premises were, until May, 1864, held by the present tenant, Hiram King, under a lease made by said John P. Ingle, executor as aforesaid, when real estate was depressed to the

lowest point, and that said lease expired in May, 1864; but that upon the expiration thereof, said John H. Ingle failed to raise the rent, notwithstanding the universal rise in rents in said city of Washington, or even to advertise said premises as for rent, but allowed said tenancy to continue on the same terms; and, further, that in the spring of 1865, said John H. Ingle raised the rents of the tenants of said stores on Market space, or some of them, upwards of
315 fifty per cent.; and, further, that two stores fronting on said 7th street, being part of the said premises rented to said King at the said rent of $2,100, are and have been for a long time past sub-let by him for $1,800 per annum, which your petitioners aver to be no more than their fair market value; so that for said hotel, situated in the heart of said city, the said tenant, in fact, pays a rental of $300 per annum. And your petitioner is further informed and believes that said King now holds the obligation of said Ingle, whereby, if the latter is secured in the control of said property, the former is to hold it as tenant on the terms aforesaid until May, 1867.

Your petitioner further shows that, besides the debt due to him, the estate of said testatrix is indebted to creditors holding specific liens in the sum of not less than $18,000 or $20,000, including interest, and to general creditors in about $7,000, including interest; that your petitioner has recently become the owner of the eldest unpaid incumbrance on said real estate, the same being a deed of trust to the late Richard Smith, to secure Catherine
316 Smith, dated the 9th of Feb'y, 1860, upon which there is now due upwards of $2,300; and that some time since he became the owner of a later incumbrance, made to secure the Bank of the Metropolis, upon which there is now one lien of upwards of $650.

That although said Ingle was prevented, by the order aforesaid, from intermeddling with said real estate, yet that the complainants in said cause have been induced to sign a paper directing the dismissal of their bill, and that the same has been this day dismissed; and that the balance admitted by said Ingle by the aforesaid account, amounting to $3,315 18, is still in his hands, the payment of the same having been withheld, because of a pretended appeal from the order appointing a receiver to this court appeal, which appeal was, on the 25th of last month, dismissed for the want of jurisdiction; and that said receiver, Jesse B. Wilson, has collected from the tenants of said real estate and now holds the sum of $727 83.

Forasmuch, therefore, as the said John H. Ingle has no authority over said real estate, and as there is no one legally authorized to execute the afore-
317 said trust of said will for the payment of debts, and as your petitioner, besides holding said specific liens, is a creditor for the large amount stated in the bill in this cause, and as such has an equitable lien upon said real estate, and entitled to full protection of said lien in its entirety during the pendency of this cause, your petitioner prays that said John H. Ingle may be enjoined and prohibited from the collection of the rents and profits of said real estate, and that a receiver may be appointed with full power and authority to take the proper care and management of said real estate, and collect the rents and profits thereof during the pendency of this cause, and to apply the same as to this court shall seem right, and your petitioner, as in duty, &c., &c.

Z. JONES.

In open court personally appeared, this 8th June, 1866, Zephaniah Jones, and made oath in due form of law, that the matters and things stated in the foregoing petition are true to the best of his knowledge and belief.

R. J. MEIGS, *Clerk.*

318 Ordered, this 8th of June, 1866, that the foregoing petition of Zephaniah Jones for an injunction and a receiver be heard on Monday next, at

11 o'clock, provided a copy of this order be served this day upon the parties to said cause who have appeared and answered as their solicitors of record.

By order of the court.

319 To the honorable the supreme court of the District of Columbia, in chancery:

The petition of James M. Crasson and Helen M., his wife, respectfully showeth: That at the filing of the bill by Zephaniah Jones against Horace Stringfellow and others, No. 502, in equity, in which case this petition is filed, your petitioners were and still are residents of the State of Texas; that your petitioner Helen M. was at the institution of said suit, and still is, one of the heirs-at-law of Anne R. Dermott, mentioned in said bill, and as such she and her said husband ought to have been made parties defendants along with the other heirs; but your petitioners further show that they or either of them are not made defendants in said suit, nor in any process or order of publication prayed for against them, but that subsequently a supposed decree, pro confesso, was obtained against all of the heirs of said Anne R. Dermott, without naming them,

320 which decree your petitioners charge to have been irregular and unwarranted by the bill, and the same ought to be set aside and your petitioners made defendants.

Wherefore your petitioners pray that said Zephaniah Jones may be ordered to amend his said bill for the purpose of making your petitioners defendants, that they may be enabled to defend their interests in said real estate, and that the said decree, pro confesso, may be modified so as not to prejudice the rights of your petitioners.

And your petitioners, &c.

ROBERT J. BRENT, *for Petitioners.*

Before me, in open court, on this, the 8th day of June, A. D. 1866, personally came Jas. Farrow, who being sworn upon the Holy Evangelists of Almighty God, says, that he is personally acquainted with James M. Crasson and Helen M. his wife, now and for several years past residents of the town of Livingston, Polk Co., Texas; that said Helen M. is a first cousin of deponent, and

321 that he, deponent, is well acquainted with the fact of her being an heir-at-law of Miss Anne R. Dermott, late of Washington city, D. C., said Mrs. Crasson being the daughter of John Stobs James, dec'd.

JAMES FARROW.

Subscribed and sworn to before me, June 8, 1866.

R. J. MEIGS, *Clerk.*

This petition of James M. Crasson and Helen M. his wife, filed June 8, 1866, having been presented and duly considered by the court, it is ordered this 3d day of July, 1866, that the prayer thereof be, and the same is refused.

By order of the court.

Recorded Eq. Min. 2, p. 181.

Indorsement on order to hear petition for injunction and receiver: Served the within order on G. H. Morgan and Rob't J. Brent, solicitor for the def'ts.

D. S. GOODING, *Marshal.*

June 8th, '66.

322 ZEPH. JONES *vs.* STRINGFELLOW *et al.* } 502.—Equity docket, 7.

Upon the reading of the petition of Dade Hooe, Lucy J. Daniel and Mary D. Hooe, it is ordered this 8th day of June, 1866, that the matter thereof stand for hearing on the 11th day of June, 1866, provided a copy of this peti-

tion and order be served on the complainant, Z. Jones, on or before the 9th day of June, 1866.

Service of copy and order acknowledged 8th June.

BRADLEY & DAVIDGE.

323 JONES *vs.* STRINGFELLOW *et al.* } 502.—Chancery.

And thereof on the 8th of June, 1866, the notice for publication of testimony came on to be heard, and it is the said day ordered that said notice be and the same is hereby granted, and that said testimony be published.

By order of the court.

ZEPH. JONES *vs.* STRINGFELLOW *et al.* } 502.—Eq. doc.

The above defendants, Dade Hooe and Lucy J. Daniel and Mary D. Hooe, show cause against the publication of the evidence as claimed for the following reasons:

1st. That they did, on the 23 May last, file in this court a petition for the withdrawal of their answer, and leave to answer de novo, which petition
324 should be acted on before the said publication should be made.

2. That the said Jones has not made all the heirs-at-law of said Anne R. Dermott defendants, as is right and proper, as shown by the petition this day filed by James M. Crasson and his wife Helen.

3. That the defendants in said cause are entitled to take evidence rebutting the testimony taken by the said Jones, but cannot proceed to take such testimony until the parties and pleadings are settled.

4. That the defendants desire to take testimony on their part in said cause.

R. J. BRENT, *for Defendants.*

Published in open court in presence of counsel of respective parties.

By order of the court.

JUNE 8, 1866.

325 To the supreme court of the District of Columbia, in chancery:

The answer of Zephaniah Jones to the petition of Dade Hooe and others.

This respondent, answering, says it is utterly false that, as alleged in and by said petition, said Robert S. Morgan acted as the agent of this respondent in obtaining the answer of the petitioners now sought to be withdrawn, or was employed by him or in his behalf, or that the travelling expenses of said Morgan were paid by respd't, or that this respd't by the alleged fraud and contrivance obtained the admission of petitioners to his claim against the estate of the late Anne R. Dermott.

Further answering, respondent avers that said admission is strictly true, and that after the filing of said answer, he was advised that said admission could be of little if any service to the cause of respondent, and that in conse-
326 quence of such service he proceeded to establish his said claim by evidence as conclusive as would have been adduced had said admission never been made, which evidence is now published in this cause; and respondent is advised that said petition ought not to be entertained by this court because it fails to state specifically wherein it is sought to change an answer sworn to and filed, and because, as respondent verily believes, the said petition is filed solely for the purpose of ——— only in the settlement of his said claim.

And further answering, *answering*, respondent shows, that by an order of

this court, passed in the case of said petitioners against John H. Ingle and others in this court, the said Ingle was enjoined from intermeddling with the real estate of said Anne R. Dermott, and a pretended appeal having been taken to this court, in general term, which was subsequently dismissed for the want of jurisdiction, the said petitioners were prevailed on to give an order
327 for the dismissal of the bill filed in said cause, and at or about the same time to sign this petition, and respondent is informed and believes that both said order and petition were obtained by false and fraudulent representations made to the petitioners, whilst they were represented by counsel in this court, when they were induced by said representations to repudiate, and respondent files herewith, marked A, a copy of the sworn statement of said counsel, George H. Morgan, esq., filed in said cause on the dismissal thereof, and also the affidavit of said Robert S. Morgan, marked B, as giving a correct history of the alteration of said answer as well as of said order to dismiss and the present petition; and, having fully answered, this respondent prays, &c., &c., &c.

Z. JONES.

Subscribed and sworn to before me this 11th day of June, 1866.

R. J. MEIGS, *Clerk*.

328 HOOE *vs.* INGLE. } 642.—Equity.

Affidavit of G. H. Morgan, solicitor for Dade Hooe, Mary D. Hooe, and Lucy J. Daniel.

On the 26th day of August, 1865, I sent my brother, R. S. Morgan, to confer with Dade Hooe, Mary D. Hooe, and Lucy J. Daniel, some of the heirs-at-law of Anne R. Dermott, and who were then living in Stafford county, Virginia, or one of the neighboring counties. My purpose in sending my said brother to said parties was to secure for myself the prosecution of their claims as heirs-at-law of Miss Dermott to a moiety of the real estate left by her at her death. The claim of said parties was entirely dependent upon the supposed nullity of a part of the last will and testament of Miss Dermott, by which the bulk of her real estate was devised to trustees for charitable purposes, and which left her relatives without any share or part whatever in her property.

329 Believing that said devise to charity was void by law, or that by the payment of the debts of Miss Dermott the estate would be so diminished as to render the execution of the trust impracticable, and that the residue would fall to the heirs-at-law, and having been informed that the real estate, if sold at an early day, might produce not less than one hundred thousand dollars, and that if litigation continued, the estate would probably become seriously depreciated in value, or be sacrificed for an inconsiderable sum under the several deeds of trust by which it was encumbered, I determined to make an effort to induce all the said heirs-at-law to unite in an attempt to set aside the portion of said will which devised said real estate to charity, and after payment of debts to obtain the surplus for themselves.

The main difficulty in the way of such an early settlement consisted in a claim urged by Zephaniah Jones against the real estate, for labor performed and material furnished by him in constructing the improvements upon said real estate known as the "Avenue House."

I was familiar with the history and facts of this claim of Jones. I had
330 been present at two of the jury trials, in which said claim was fully investigated, and I had been informed of the result of another trial, in all which Jones obtained verdicts and judgments for the full amount demanded by him. I was aware that the first two of said judgments had been reversed by

the Supreme Court of the United States; but on examination of the decisions of said Supreme Court, I ascertained that the reversals had been on technical points merely, and that the court had declared substantially that Jones was entitled to fair remuneration for building said Avenue House, less any recoupment to which Miss Dermott might be entitled. The last verdict and judgment obtained by said Jones was for about $37,000; and from that judgment no appeal had been taken by the defendant. I was aware that in 1861 Miss Dermott had died, and John P. Ingle, one of her executors, had assumed the management of her estate; that in 1863 John P. Ingle died, and his son
331 and executor, John H. Ingle, took out letters as administrator de bonis non cum testamento annexo of Miss Dermott, and proceeded to exercise the same authority over the real estate which had been rightfully exercised by said John P. Ingle. I knew that a clause in the will of Miss Dermott especially prohibited the personal representative of any of her executors from succeeding to the powers of such executor over the real estate, but provided for the custody of the same in another way, and that the usual bonds of an administrator de bonis non were merely for the faithful management of the goods and chattels, and did not extend to the real estate, and that said John H. Ingle was, therefore, entitled to exercise no control over, and was in nowise responsible for the said real estate.

I fully explained those facts to my brother, and instructed him to lay them before Dade Hooe, Mary D. Hooe, and Lucy J. Daniel.

On the 27th of August, 1865, my said brother saw Dade Hooe at his home, in Stafford county, Virginia. On his return my brother informed me that he had stated his mission to Mr. Hooe and had received a favorable reply,
332 and that Dade Hooe was willing that all just and equitable debts should be paid, including that of Jones.

On the 7th of September following I again sent my brother to said Dade Hooe, and gave him a copy of the will of Miss Dermott, and also a copy of a bill which had been filed in this court by Zephaniah Jones to subject said real estate to the payment of the debt of $37,000, claimed by said Jones to be due him for building the Avenue House, and to which bill all the heirs-at-law of Miss Dermott were made defendants. I also gave to my brother an answer to said bill of Jones, substantially consenting to the payment of whatever might be justly due said Jones, and consenting to the sale of the real estate in question. I also directed my brother to enter into a contract for me securing to me compensation for my services, and of such other counsel as I might require in the prosecution of their rights; and I also directed him to take powers of attorney from said Dade Hooe, May D. Hooe, and Lucy J. Daniel, empowering him to use all legal means to set aside the will of Miss Dermott aforesaid.

On his return from this visit my brother reported to me that he had
333 held full and free consultation with said Dade Hooe, M. D. Hooe, and L. J. Daniel, that he had laid the facts fairly before them, and that they had replied that they were willing to do justice to all creditors, and cheerfully consented to a fair adjudication of the amount of the claim of said Jones, and to the payment of whatever might be found due to him; that they would be glad to have the whole estate settled, and were anxious to receive speedily whatever sum might remain to them after such settlement; that they also, on the 8th of September, executed a contract with me as aforesaid, (a copy of which is filed herewith, and marked A,) and on the same day executed powers of attorney to my said brother, authorizing him to act for them as aforesaid; that they also on the same day signed and swore to their answer to Jones's bill, which answer I filed in this court on the 9th day of October, 1865.

On the 9th day of September I also sent my said brother with copies of said will, bill, answer, and contract, and with the same instructions, to the heirs-at-law of Miss Dermott residing in the State of South Carolina. On his return

334 he reported to me that these last-mentioned heirs were unwilling to employ me or to contract with me as their counsel in the business, but that they were willing that the estate should be settled; and with that view, after a full examination of the papers aforesaid, and consultation among themselves, they prepared an answer by their own solicitor, a Mr. Simpson, which answer they desired my brother to convey to this court, and I filed for them on the 9th day of October, 1865.

On the 8th of March, 1866, I once more sent my said brother to Dade Hooe, Mary D. Hooe, and Lucy J. Daniel, with a bill setting forth the relationship of said parties to Miss Dermott, and praying this court for an order enjoining John H. Ingle aforesaid from further interfering with the real estate aforesaid, and placing the same in the hands of a receiver to await the final disposition of all the questions in issue.

On his return my brother brought back said bill, which he stated was signed and sworn to by Dade Hooe, signed by Mary D. Hooe, and the name of Lucy J. Daniel was signed by Mary D. Hooe, as she stated to him, by au-
335 thority of said L. J. Daniel. Said bill I filed in this court on the 12th of March, 1866; the order prayed for was granted, and Jesse B. Wilson was appointed receiver.

Up to this period all parties, with the exception of John H. Ingle, seemed willing and desirous to terminate the litigation, and to settle the estate of Miss Dermott justly and equitably among the creditors and heirs-at-law, and I entertained strong hopes that such a result might be speedily accomplished.

In December, 1865, or January, 1866, one James Farrow came to me representing himself as a lawyer from South Carolina, and as solicitor for the heirs of Miss Dermott in that State. He also stated that he was related to Miss Dermott, and interested in the estate. He professed to call upon me as the solicitor of Dade Hooe, Mary D. Hooe, and Lucy J. Daniel, and requested me to give him information in relation to the condition of the estate and the proceedings relative thereto. I gave him full information, and stated *and stated* my conviction as to the result of the litigation in progress. He then departed,
336 but subsequently corresponded with me, addressing me in the capacity of counsel for Dade Hooe, Mary D. Hooe, and Lucy J. Daniel.

About the 1st day of May last he again called on me at my office, and inquired of me as to the progress and condition of affairs in relation to the estate of Miss Dermott, conversing with me as counsel for Dade Hooe as before. On taking his leave at this interview, he promised to examine the evidence in Jones's case, which was the main point of delay, and call again at an early day, and communicate his conclusions, so that by joint action we might hasten the adjustment of the rights of all parties.

From the demeanor of said Farrow, and from his failure to keep said promise, and from other circumstances, my suspicions were aroused as to his conduct and purposes. After waiting for some time in vain for his reappearance, I became convinced that he was engaged in some scheme, in concert with John H. Ingle and his agents, for the purpose of defrauding me of my compensation as counsel of said Dade Hooe, Mary D. Hooe, and Lucy J. Daniel, as also for the
337 purpose of betraying said Dade Hooe into measures against his interest. I therefore warned said Hooe against the influence of Farrow and others in concert with him.

But the next information I received of said Farrow was an order of Dade Hooe to dismiss the bill against Ingle, which order I knew was in the handwriting of said Farrow. I immediately sent my brother to Dade Hooe to demand an explanation of this order. On his return, my brother informed me that Dade Hooe, as such explanation, exhibited to him a letter about ten pages in length, which he recognized as the handwriting of said Farrow. This letter, my brother informed me, consisted of a series of statements, to the effect that

he (my brother) was hired by Jones to deceive and mislead the heirs of Miss Dermott, so that Jones might fraudulently obtain payment of the sum of $40,000, or more, which was really not due him; that, in constructing the said Avenue House, Jones had performed his work so negligently that the walls would not stand; that instead of Miss Dermott owing Jones anything
338 in reality, Jones was indebted to her; that Miss Dermott had been compelled to hire other workmen to rebuild the house after Jones had utterly failed to keep his contract; that Jones had improperly obtained verdicts and judgments for the amount of his claim, but that the Supreme Court of the United States had decided that Miss Dermott was right and Jones was wrong in their litigation as to said claim; that John H. Ingle was under proper bonds for the security of the real estate—that he had not wasted or neglected to improve the condition of the same; that he had carried on litigation for the purpose of defending the estate against the unfair claims of Jones, and to preserve it for the benefit of the heirs-at-law; that if the heirs-at-law would all unite in support of the proceedings of said Ingle, it would be easy to defeat the claim of Jones, and thus have the large sum of $40,000, or more, to be divided among themselves.

My brother informed me that Dade Hooe declared that he had been led by these statements of said Farrow in said letter to repudiate me as his counsel, and to combine with said Farrow for the employment of other counsel,
339 with a view to carry out the scheme for defeating Jones's claim and securing the amount of said claim to themselves.

My brother also informed me that he declared to said Dade Hooe that the statements in said letter of said Farrow were false; to which said Hooe replied that he had decided finally to unite with said Farrow in support of said Ingle, and to employ the counsel of said Ingle to defend their interests.

I believe that it will not be for the interests of Dade Hooe, Mary D. Hooe, and Lucy J. Daniel to dismiss this bill; but, since it is their desire so to do, I consent to dismiss it; but I nevertheless reserve my rights under the aforesaid contract.

GEO. H. MORGAN.

Subscribed and sworn to before me, June 6, 1866.

R. J. MEIGS, *Clerk.*

340 A.—*Copy of contract.*

The undersigned, heirs-at-law of Anne R. Dermott, deceased, late of Washington city, D. C., hereby agree to pay George H. Morgan for professional services an amount equal to one-third of the value of such property or money, part of the estate, real or personal, of said Anne R. Dermott, as he may recover for the undersigned or any of them.

The said compensation to be in full for both the services of said Morgan and such other professional services as may be required for said recovery, to be contingent upon success, and to be a lien upon the property or money recovered.

Witness our hands this 8th day of September, 1865.

(Signed) DADE HOOE.
(Signed) L. J. DANIEL.
(Signed) MARY D. HOOE.

Witness:

(Signed) R. S. MORGAN.

341 I, Robert S. Morgan, do hereby state and declare that on 26th day of August last, at the instance and request of my brother, George H. Morgan, a member of bar of supreme court of the District of Columbia, I went to Stafford Co., in the State of Virginia, to obtain from Dade Hooe and his sisters, Mrs. Mary D. Hooe, and Mrs. Lucy J. Daniel, a contract for the employment of my brother

in the prosecution of their claim, as heirs-at-law of Anne R. Dermott, to the real estate left by her in the city of Washington. I then understood that said heirs-at-law were entitled to one-half of said real estate after payment of the deeds of trust upon the property, and the debts due by the deceased, provided the devise to the charity mentioned in her will were set aside, as I was informed by my brother it would be. I was aware of the claim *of the claim* of Zephaniah Jones for constructing the improvements upon said real estate; I believed that a large sum of money was due him, but that if the property could be speedily brought into market there would be left, after payment of all debts, a handsome surplus for division among the heirs-at-law. I was employed
342 by my brother alone, and acted on his behalf only. I knew no other principal. I saw Dade Hooe, and I fully and truthfully stated the case as I understood it; I told him that the devise to the charity was in itself void and of no effect; after discussing the subject, he stated to me that he wished all just debts paid, and for the recovery of the interests of himself and sisters agreed to employ my brother.

On that visit I did not see his sisters. I accepted his invitation to pass the night at his house, and the whole subject was talked over; I never had heard it doubted that a large sum of money was due Jones, and I presume I so stated.

On my return to Washington, I reported to my brother what I had done.

On the 7th of September last, I was sent again by my brother to Hooe and his sisters. I took with me a full copy of the bill filed by Zephaniah Jones against the heirs-at-law of Anne R. Dermott, John H. Ingle, administrator, and others, to subject said real estate to sale for payment of his *his* debt. I
343 also took a copy of the will of Anne R. Dermott, powers of attorney, and a contract, and also an answer to be submitted to said heirs-at-law. On reaching Hooe's house I found his sisters with him. I put all said papers in hands of said Dade Hooe, and in my presence and the presence of his sisters they were all read over, and we all four conversed fully about them, so that said heirs-at-law fully and perfectly understood the whole subject. They all understood that the devise to the charity was regarded as void, and that in consequence the estate had descended to the heirs at-law, subject to the debts and legacies; that the debt of Jones was contested by Anne R. Dermott, and that by reason of the death of John P. Ingle, there was no one legally authorized to hold and control the real estate, and they all felt or professed to feel the necessity of a speedy settlement of the estate, and that it should not be wasted in useless, expensive, and protracted litigation. I did not conceal any fact relative to the case within my knowledge; I believed the estate to be amply sufficient to pay all debts and leave a surplus for the heirs, if it could be
344 brought speedily into market, and I also believed that if the litigation went on it would be to the detriment of the heirs-at-law, and I so stated; after full consultation and reflection the powers of attorney to me were signed and acknowledged, and the contract with my brother was signed, and the answer submitted to them was signed and sworn to. A copy of said contract is filed with my brother's statement in the cause of Dade Hooe and others against John H. Ingle and others, No. 642, (equity;) the powers of attorney are in my possession, and the answer is on file in the cause of Zephaniah Jones against Stringfellow and others, No. 502, (equity.)

Subsequently I went, by direction of my brother, to obtain a similar contract from certain heirs-at-law of Miss Dermott living in South Carolina, and I laid the case fully before them, placing in their hands copies of said will, bill, answer, and contract, but they declined to employ my brother. A member of the family, however, said to be a lawyer by profession, and named Simpson, drew an answer for them, which answer was signed and sworn to by
345 said heirs and delivered to me, with the request that I would have it filed for them. I delivered it to my brother and it was filed by him.

made substantially the same representations to said South Carolina heirs which I had made to Dade Hooe and his sisters. They consulted among themselves, with said papers in their possession one or two days, and seemed to understand the case fully.

About the day of April last, I was again sent by my brother to visit Dade Hooe and his sisters, in relation to a bill to be filed by them against John H. Ingle, praying the appointment of a receiver to manage said real estate. I carried the bill with me to obtain their signatures and oaths. The sisters of Dade Hooe were not at his house, but he read the bill, signed, and swore to it. I then saw Mrs. Mary D. Hooe, and she signed the bill in my presence, and I believe she also signed the name of Mrs. Daniel. I delivered the bill to my brother, and he filed it in this court.

346 Afterwards an order, signed by Dade Hooe, to dismiss this bill was filed. I was immediately sent by my brother to demand an explanation of this conduct. Dade Hooe then exhibited to me a letter from one James Farrow, filling eight or ten pages, in which all the matters contained in the petition to withdraw the answer aforesaid filed in the suit of Jones, and much more, were stated.

I knew this letter to be in the handwriting of said Farrow. Hooe also informed me that, in addition to the letter, said Farrow had visited him in person, and that, after consultation with said Farrow, said Hooe had been induced and persuaded to repudiate my brother, and, in concert with said Farrow, as representing the South Carolina heirs, to employ the counsel for said Ingle. I believe this Farrow is the son of Mrs. Farrow, one of the South Carolina heirs-at-law of Miss Dermott. I denounced as false certain of the statements in said letter, and especially the statement that I was the agent of Zephaniah Jones.

I subsequently applied to Dade Hooe for this letter, or a copy thereof,
347 but was told by him that in the interval between my reading it and the application in question, which interval was about one week, Farrow had taken said letter away with him. I have carefully read the statement of my brother, filed in the case of Hooe against Ingle, No. 642, (equity,) and, so far as said statement relates to my acts and declarations in the premises, it is correct, and I hereby adopt the same. In what I have done in the matters aforesaid, I have acted entirely for and in behalf of my said brother.

R. S. MORGAN.

Subscribed and sworn before me, June 11, '66.

R. J. MEIGS, *Clerk.*

348 *Petition of Dade Hooe.*

STRINGFELLOW *et al.* *vs.* ZEPHANIAH JONES. } In equity.—No.

To the supreme court of the District of Columbia, in chancery:

The petition of Dade Hooe, Mary D. Hooe, Lucy J. Daniels, Maria S. Anderson, Robert B. James, Eliza S. Ballew, Susan W. Garlington, Jane S. Farrow, Benjamin S. James, in his own right and as administrator of George S. James, and James M. Crasson, and Helen M. his wife, heirs-at-law of Ann R. Dermott, deceased, respectfully showeth, that all of them except James M. Crasson, and Helen M. his wife, are either made defendants or have answered the bill of said Jones, and all of them are heirs-at-law of Ann R. Dermott, and as such entitled to her real estate in the District of Columbia, after the payment of her just debts and pecuniary legacies; devises made to charitable uses in her last will being, as they charge, void. Your petitioners further show, that said Jones hath filed a petition in said cause for an injunction, and the appoint-

ment of a receiver, on certain pretended grounds therein set forth, but
349 your petitioners aver that his real object in such petition is not for the security of his alleged claims, (which by the admissions of his own bill are not in the slightest jeopardy by reason of the insufficiency of the real and personal estate of said Ann R. Dermott to pay any claims he has or may recover,) but his object and design is, by this and other proceedings which he has recently set on foot, to force the payment of his unfounded and long-contested claim as creditor against said estate. Your petitioners refer to the petitions already on file in this cause by them, or some of them, and beg leave to make them part hereof for the purpose of remarking the oppressive and improper designs of said Jones. These petitioners further show that John H. Ingle has fully answered the said petition of said Jones, and they beg leave to adopt his said answer and to rely on the same as part of this petition.

And your petitioners are advised and charge that, by the true construction and effect of the last will of said testatrix, she designed to continue the trust over all the rents and profits thereof until the payment of all her just debts and pecuniary legacies, and to devolve said trust upon her administrator de
350 bonis non cum testamento annexo in the rents which have occurred as set forth in said bill of said Jones, and your petitioners charge that said trust is now vested and continued in said John H. Ingle as such administrator, and your petitioners deny that said Ingle has in any manner acted contrary to his duty in the premises as such administrator or trustee, but on the contrary they aver that he has faithfully guarded the interests of all who are beneficially interested in said estate, and especially in resisting the extortionate demands of said Jones. But in case it shall appear that said Ingle is not empowered by said will or otherwise to act as trustee in collecting said rents and profits, then your petitioners are advised and charge that a new trustee should be appointed to present the failure of the trust, which by said will is manifestly intended to continue until the payment of said debts and legacies, and your petitioners being the only parties interested in said rents and profits except the legatees as clearly admitted in the bill of said Jones, humbly pray for the protection of their interests, that said Ingle may be appointed such trustee until the period when said trust will expire by the terms and effect of said will. And your petition-
351 ers deny that the petition of said Jones shows a proper case for a receiver and injunction; nevertheless say that if this court shall insist on the appointment of a receiver at the instance alone of said Jones and against the earnest protest of the heirs-at-law, then your petitioners claim that said Ingle shall be appointed such receiver.

Your petitioners pray that no action in the premises shall be taken until the said Jones shall have answered this petition and the petitions filed in said cause by some of your petitioners, and until they have had an opportunity by evidence to make good the allegations of this petition and of said several petitions, of some of them; and, as in duty.

ROBERT J. BRENT, *for Petitioners.*

352 In open court this 11th day of June, 1866, personally appears James Farrow and makes oath, on the Holy Evangely of Almighty God, that he represents the above petitioners, and each of them, as their authorized agent; and as evidence of his authority he files herewith his several powers of attorney, marked J. F., Nos. 1, 2, 3, and 4.

And deponent further made oath that the facts stated in the aforegoing petition are true to the best of his knowledge and belief.

JAS. FARROW.

Subscribed and sworn to before me June 11, 1866.

R. J. MEIGS.

Ordered this 11th June, 1866, that the matter of this petition stand for hearing on the 13th of June, 1866, provided a copy of the same and this order be served on the solicitor of said Z. Jones on or before 12th June, 1866.

By order of the court.

353 J. F.—No. 1.

Whereas the undersigned, heirs-at-law of Benjamin James, dec'd, are among the next of kin of Miss Ann R. Dermott, dec'd, late of Washington city, D. C.; and whereas the undersigned, as next of kin, are interested in having the paper writing purporting to be the last will and testament of said Anne R. Dermott legally tested, and in having all claims upon said estate legally examined; and whereas proceedings have instituted in the courts of the District of Columbia to subject said estate to large demands of alleged creditors, and otherwise affecting the rights and interests of the next of kin: Therefore,

Know all men by these presents, that we, the undersigned, do make, constitute and appoint James Farrow, of Spartensburg, S. C., our true and lawful attorney, for us and in our names and stead to demand, sue for, receive and receipt for, in whole or in part, any sum or sums of money that are or may be due to us, or either of us, from the estate of Ann R. Dermott aforesaid, with power also as attorney or attorneys under him for that purpose, to make and substitute and to do all lawful acts for affecting the premises, hereby rat-

354 ifying and confirming all that our said attorney or his substitute or substitutes shall do therein by virtue hereof.

And we do further authorize and empower the said James Farrow to compromise, in any such manner and upon any terms he may think right and proper, all or any portion of our interest in the aforesaid estate—the said James Farrow himself alone to exercise the power granted in this clause, and not to delegate said power to any substitute or substitutes—hereby ratifying and confirming all that said James Farrow may do in pursuance of the power granted in this clause of this deed.

Witness our hands and seals, this the 24th day of February, 1866.

JOHN GARLINGTON. [SEAL.]
SUSAN W. GARLINGTON. [SEAL.]
M. S. ANDERSON. [SEAL.]
[Int. rev. 50 cts.] B. S. JAMES. [SEAL.]
JANE S. FARROW. [SEAL.]
ELIZA L. BALLEW. [SEAL.]

Test:

JNO. WELLS SIMPSON, JR.

SOUTH CAROLINA, *Laurens district:*

Personally came before me, W. H. Langston, ordinary and judge of the court of probate for said district and State, Jno. Wells Simpson, jr., and made oath that he saw John Garlington, Susan W. Garlington, M. S. Anderson, B.

355 S. James, Jane S. Farrow, and Eliza L. Ballew sign the foregoing instrument, the same being duly sealed before signature with [L. S.] for each of their names.

Witness my hand and seal of office, this the 26th day of February, 1866.

[SEAL.] W. H. LANGSTON, *O. L. D.*

[Int. rev. 5 cts.]

356 J. F.—No. 2.

Whereas the undersigned. heirs of Benjamin James, dec'd, are among the next of kin of Miss Ann R. Dermott, dec'd, late of Washington city, D. C.; and whereas the undersigned, as next of kin, are interested in having the paper

writing purporting to be the last will and testament of Ann R. Dermott legally tested, and in having all claims upon said estate legally examined; and whereas proceedings have been instituted in the courts of the District of Columbia to subject said estate to large demands of alleged creditors, and otherwise affecting the rights and interests of the next of kin: Therefore,

Know all men by these presents, that we, the undersigned, do make, constitute, and appoint James Farrow, of Spartensburg, So. Car., our true and lawful attorney, for us and in our names and stead to demand, sue for, receive, and receipt for, in whole or in part, any sum or sums of money that are now or may be due to us or either of us from the estate of Ann R. Dermott aforesaid, with power also, as attorney or attorneys under him for that purpose, to make and substitute and to do all lawful acts *and to do all lawful acts* for effecting
357 the premises, hereby ratifying and confirming all that our said attorney or his substitute or substitutes shall do therein by virtue hereof.

And we do further authorize and empower the said James Farrow to compromise, in any such manner and upon any such terms as he may think right and expedient, all or any portion of our said interest in the estate aforesaid, the said James Farrow himself to exercise the power granted in this clause, and not to delegate said power to any substitute or substitutes; hereby ratifying and confirming all that said James Farrow may do in pursuance of the power granted in this clause of this deed.

Witness our hands and seals this the 26th day of March, 1866.

ROB'T B. JAMES. [L. S.]
SARAH H. JAMES. [L. S.]

Test:
HIRAM NORRIS.
[Int. rev., 50 cts.]

THE STATE OF ALABAMA, *Montgomery county:*

I, David Campbell, judge of probate in and for the county and State aforesaid, hereby certify that Hiram Norris, a subscribing witness to the foregoing conveyance, known to me, appeared before me this day, and being sworn, stated that Robert B. James and Sarah H. James, his wife, the grantor
358 in the conveyance, voluntarily executed the same in his presence on the day the same bears date; that he attested the same in the presence of the grantor.

Given under my hand this 27th day of March, 1866.

DAVID CAMPBELL,
Judge of Probate.

J. F.—No. 3.

Whereas the undersigned are among the next of kin of Ann R. Dermott, dec'd, late of Washington city, D. C., and interested in having the will of said Miss Ann R. Dermott legally tested, and in having all claims upon her estate legally examined; and whereas proceedings have been instituted in the courts of the District of Columbia for the purpose of subjecting said estate to large demands of alleged creditors, and otherwise affecting the rights and interests of the next of kin: Therefore,

Know all men by these presents, that we, the undersigned, do make, constitute, and appoint James Farrow, of Spartensburg, So. Car., our true and lawful attorney, for us and in our names and stead to sue for, receive, receipt for,
359 and demand in whole or in part all or any sum or sums of money that are or may be due to us or either of us from the estate of Ann R. Dermott, with power also, as attorney or attorneys under him for that purpose, to make and substitute and to do all lawful acts for effecting the premises, hereby ratifying and confirming all that our said attorney or his substitute or substitutes shall do therein by virtue hereof.

And we do further authorize and empower the said James Farrow to compromise, in any such manner and upon any such terms as he may adjudge right and expedient, all or any portion of our rights and interest in the estate of the said Ann R. Dermott, dec'd, hereby ratifying and confirming all that said James Farrow may do under this clause, it being the intent hereof that the power delegated by this clause to said James Farrow is not to be delegated by him to anybody else.

Witness our hands and seals this the twenty-eighth day of March, 1866.

J. M. CROSSON. [L. S.]
HELEN M. CROSSON. [L. S.]

Test:
A. T. WATTS.

THE STATE OF TEXAS, *County of Polk:*

Before me, D. D. Moore, chief justice of the county court of Polk
360 county, Texas, personally came A. S. Watts, who being by me duly sworn, on oath says, that he saw J. M. Crosson and Helen M. Crosson subscribe their names and affix their seals to the foregoing instrument of writing, and acknowledged that they had executed the same for the purposes and considerations therein stated, and that he signed the same as a witness at the request of the said J. M. Crosson and Helen M. Crosson.

In testimony whereof, I hereunto subscribe my name and affix the seal of
[SEAL.] the county court of Polk county, Texas, this the 28th day of March, A. D. 1866.

D. D. MOORE,
Chief Justice Polk Co., Texas.

[Int. rev. 5 cts.]

J. F.—No. 4.

Know all men by these presents, that we, the undersigned, Dade Hooe, Lucy J. Daniel and Mary D. Hooe, heirs-at-law of Miss Ann R. Dermott, dec'd, late of Washington, D. C., do hereby constitute and appoint James Farrow, esq., of
361 Spartansburg, S. C., our true and lawful attorney-at-law and attorney in fact, for us and in our names and stead to demand, sue for, receive and receipt for, in whole or in part, any sum or sums of money that are or may be due to us or either of us from the estate of Ann R. Dermott, dec'd, and to manage and direct, as our attorney-at-law and our attorney in fact, our right and interest in said estate, with power also, as attorney or attorneys either at law or in fact, or counsellor or counsellors under him for that purpose, to make and substitute and to do all lawful acts for effecting the decision and recovery of our rights and interests in said estate, and for enabling us to realize whatever shall be found legally and justly due to us from the estate aforesaid. It being the intent of these presents to authorize and empower said James Farrow, who is the agent and attorney professionally and in fact of the So. Car. heirs of said estate, to act for us and in our behalf about our interests in said estate in the same manner that he shall act in relation to the So. Carolina heirs' interests in said estate; hereby revoking all powers heretofore granted to any person to act in the premises, and hereby ratifying and confirming all that our said attorney, James Farrow, or his substitute or substitutes, shall do herein, by virtue hereof.

362 Witness our hands and seals, this the 19th day of May, A. D. 1866.

DADE HOOE. [L. S.]
MARY D. HOOE. [L. S.]
LUCY J. DANIEL. [L. S.]

Witness:
J. A. HOOE.

[Int. rev. 10 cts.]

STATE OF VIRGINIA, *Prince William's county:*

Before me, a justice of the peace for the county and State aforesaid, personally appeared Mrs. Mary D. Hooe and Mrs. Lucy J. Daniel, whose names appear above, and being first sworn in due form, upon the Holy Evangelists of Almighty God, declared that their signatures above, purporting to be therein, are genuine, and that said signatures severally are their own act and deed.

Also appeared Mr. Isaac F. Hooe, who being also sworn as above, acknowledges that he witnessed, personally, the signatures aforesaid of Mrs. Mary D. Hooe and Mrs. Lucy J. Daniel, and that their signatures as well as his own are severally their and his act and deed. The signatures of Mrs. Hooe and
363 Mrs. Daniel being subscribed on a different day from that of Dade Hooe —the former being on this the 21st May, 1866.

L. B. BUTLER, *J. P.*

STATE OF VIRGINIA, *Prince William's county, to wit:*

I, Mordecai Sinclair, clerk of the court of the county aforesaid, in the State of Virginia, do hereby certify, that Lewis B. Butler, whose name is subscribed to the foregoing certificate, is a justice of the peace in and for the county aforesaid; that his signature is genuine, and to all his official acts as such, full faith and credit are due and ought to be given thereto, as well in courts of justice as thereout.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of said county, this 21st day of May, A. D. 1866.

[SEAL.] M. B. SINCLAIR, *Clerk.*

[Int. rev. 5 cts.]

STATE OF VIRGINIA, *Spotsylvania co.:*

Before me, a notary public in and for the county and State aforesaid, personally appeared Dade Hooe, whose name appears above, and being first sworn in due form upon the Holy Evangelists of Almighty God, declared that the signature above, purporting to be his, is genuine, and that said signature is his own act and deed.

364 Also appeared Mr. Isaac F. Hooe, who being also sworn as above, acknowledged that he witnessed, personally, the signature aforesaid of Dade Hooe, and that the signature of Dade Hooe, as well as his own, are severally the act and deed of Dade Hooe and Isaac F. Hooe.

In testimony whereof, I have hereto signed my name, and affixed my official seal, this 22d day of May, 1866.

[SEAL.] HENRY T. BOTTS,
Notary Public.

365 In the supreme court of the District of Columbia.

In equity—No. 502.

The answer of John H. Ingle to the petition of Zephaniah Jones respectfully showeth, that, saving all and every exception to the petition of said Jones filed in this case, by reason of the manifold uncertainties and insufficiencies thereof, for answer unto so much thereof as is material, saith, that so far as said Jones is the assignee of the two liens set up in his said petition, the aggregate of said liens, by his own showing, does not exceed $3,000, but your respondent is advised and charges that said Jones, having by his bill in this cause prayed that all said liens be paid out of the proceeds of the real estate, when sold, and having therein confessed that the said real estate was more than sufficient to pay all the debts and legacies of Ann R. Dermott, he cannot now, under the
366 pretext of his holding said two liens, claim to interfere with the rents and profits of said real estate.

And in making this charge your respondent showeth that there is no difficulty in said Jones obtaining the payment of said liens in full, by a decree to sell said real estate to pay the same, or by having a trustee appointed in place of Richard Smith, deceased, to make said sale, or by calling on J. Carroll Brent, the trustee in one of said deeds, to make said sale. This respondent moreover saith, that in 1864 or 1865, when real estate in said city of Washington was greatly enhanced, and the real estate mentioned in said bill would have brought a far higher price than now, the said J. Carroll Brent, trustee in one of said liens, advertised said property for sale, and thereupon the said Jones immediately went and purchased the debt secured by said lien and forbade said trustee
367 from making said sale, and your respondent charges that said Jones hath obtained said two liens for the purpose thereby of obtaining some supposed control over said property, not for the legitimate purpose of paying off said liens, but for the unjustifiable purpose of coercing, by proceedings of the character of this petition, a recognition and payment of his other claims as a creditor of said testatrix.

This respondent further saith, that there is in his hands and in the hands of Jesse B. Wilson (appointed receiver of said estate under the order of the Hon. Andrew Wylie, sitting in equity in the case of Dade Hooe and others against your respondent, which has been since dismissed) a sufficient sum of money to pay and satisfy all the money due on said two liens, now claimed to be held by said Jones; and your respondent is willing that your honor shall pass
368 an order for the payment forthwith of said two liens, about which there never has been any dispute, and which could have been paid at any time if desired by the holders thereof. Your respondent further showeth, that so far as the other claims of said Jones are involved, they are in contest and not judicially established by the final judgment of any court whatever; but even if said claims were undisputed, your orator is advised and charges that, as creditor at large, the said Jones would have no equitable lien on said real estate or the rents and profits thereof, but only a right in common with other creditors to have the same sold for the payments of the debts of the testatrix, and the said estate being confessedly more than sufficient for the payment of all said debts, your respondent charges that no recourse can be had to the rents and profits thereof, either under said bill or petition.

369 This respondent further saith, that the expenses of litigation which the petition charges to be a diversion from the trusts of said will, were incurred by this respondent in controlling and reversing two erroneous judgments in favor of said Jones, which this respondent, the executor of said Anne R. Dermott, as well as said testatrix, had contested before this respondent was made a party thereto; and in recovering judgment against Charles Wallack and his securities, by which when realized, as this respondent expects it to be, several thousand dollars will be realized for the benefit of said estate, largely exceeding the amount of said expenses; and your respondent denies that he has diverted the said rents and profits from the trusts of said will, but avers that he was authorized and required by his duty as administrator, with the will annexed, to resist, send, demand of said Jones, in the suit bequeathed to
370 him by said testatrix and her executor, and also to recover said judgment against said Wallack and his sureties, and for that purpose to defray expenses of such litigation, no creditor but said Jones objecting, and he not having any right as creditor to object at the times of paying said expenses, because he had no lien or interest in said rents or profits.

And this respondent further showeth, that the heirs-at-law of said Ann R. Dermott, now that they have been correctly informed as to the true nature of said Jones's claim and conduct, desire your respondent to continue to discharge the duties of trustee under the provisions of said will, until said debts and legacies are paid and the property ready for distribution among the heirs-at-law.

Your orator is not conversant with law matters, but is advised and charges, that said trust did not cease with the death of the executor, but survived and devolved, under the true interpretation of said will, on your respondent as administra-
371 tor with the will annexed; but if the trust did not so devolve, your respondent is advised and charges that it was the manifest design of the testatrix to continue the trust of her estate until all debts and legacies were paid; and your respondent is advised and charges, that if there be now no trustee, your honorable court ought to appoint a trustee, and it is not a case for a receiver.

This respondent further saith that the allegations of said petition in stating that the lease of said King expired in May, 1864, are untrue, and this respondent herewith files the lease to said King, marked "J P. I.," and prayed to be taken as part hereof, by which it appears that said lease made by the executor expired the first of May, 1863, when rents were not high in Washington, and when your respondent redemised said premises to said King for another lease of three years, because said King refused to take the property for a shorter
372 time or a greater rent, and in the then state of affairs this respondent saw no chance of getting a tenant on more favorable terms. This last lease only expired the first of last May, since when, owing to the proceedings set on foot by said Jones, this respondent saith that he did not feel authorized to do more than lease the same for one year to said King, as appears by a copy of said last lease marked "J. H. J. A.," made a partt hereof. This respondent saith that on the first of May last rents in Washington city had much declined from what they were in 1864 and 1865; and if said Jones, or any party interested, had desired to improve the rent of said property, and had notified this respondent of a better tenant, he would gladly have accepted such new tenant on more favorable terms than those offered by said King. This respondent further saith that said expenses of litigation mentioned in said petition consisted only
373 of some $1.300 paid to his counsel for services rendered in arguing the case of said Jones in two courts, as well as the said case of Wallack, and of the court costs in said suits, and for which last costs in part your respondent has judgment against said Jones, as appears by the mandate of the supreme court now on file in this case, and which costs said Jones has never paid.

This respondent further denies that since said order of injunction in the case of Dade Hooe, &c., he did intermeddle in any way or in obtaining the order of said Dade Hooe and his sisters, as covertly though falsely insinuated in said petition.

ROBERT J. BRENT.

In open court this 11th June, 1866, personally appears John H. Ingle and made oath that the facts stated in the aforegoing petition are true, to the best of his knowledge and belief.

JOHN H. INGLE.

Subscribed and sworn to before me June 11, 1866.

R. J. MEIGS, *Clerk*.

374 J. P. I.

Articles of demise and covenant, made and concluded on this twenty-third day of March, eighteen hundred and sixty-one, between John P. Ingles, executor of Anne R. Dermott, of the one part, and Hiram J. King, of the other part, both the said executor and the said King being of the city of Washington, witnesseth, that the said executor hath granted, leased, and demised, and by these presents doth grant, lease, and demise unto the said King, for and in consideration of the rents, covenants, and agreements hereinafter covenanted and agreed to be paid, kept and performed on the part of the said King, all

that house and premises situate at the southeast corner of square No. 432 in the city of Washington, belonging to the estate of the late Anne R. Dermott, except the three stores on the ground floor thereof which front Market space, and the cellars under and vaults in front thereof—that is to say, all of the said house and premises which the said King now has in possession—for the term of two years from the first day of May next, fully to be completed
375 and ended; he, the said King, yielding and paying therefor to the said executor, for and during the said term of two years, the monthly rent of one hundred and seventy-five dollars monthly, and every month during the said term of two years—that is to say, on the last day of every calendar month during the said term.

And the said parties do, by these presents, covenant and agree, the one with the other, as follows—that is to say: that he, the said King, shall not and will not, at any time or times during the said term, assign or underlet the same premises, or any part or parcel thereof, for any term or time whatsoever, to any person or persons whatsoever, without the express consent in writing of the said executor, excepting, however, the two store-rooms fronting on Seventh street, with their appropriate parts of the cellar, which the said King is at liberty to underlet. And it is, by these presents, stipulated and agreed between the said parties, and these presents are made and constituted upon the express condition, that if the said King shall at any time or times hereafter
376 during the said term so assign or underlet the said demised premises, or any part or parcel thereof, excepting as hereinbefore excepted, without such consent as aforesaid, then, and in that case, the said term shall, at the sole option and election of the said executor, utterly cease and determine, and the said executor shall and may, at his sole option and election, immediately thereupon re-enter upon and repossess himself of the said demised premises, and expel therefrom the said King and every assignee or under-tenant who may be found in possession.

And the said King, on his part, covenants and agrees that he will, at his own proper cost, keep the said demised premises and their appurtenances in good order, excepting the tin gutters at the eves of the house and the tin down-shot pipes leading therefrom; and that he will deliver all the said demised premises and their appurtenances unto the said executor at the end of the aforesaid term of two years in such good order and condition, the ordinary and inevitable wear excepted.

And whereas the said King has, at his own cost, made various im-
377 provements in and upon the said premises and appurtenances, by introducing water and gas pipes thereupon, putting up partitions, constructing sink and other works, and whereas he proposes to make other improvements for his own accommodation, it is therefore hereby agreed between the parties aforesaid, that all improvements so made and to be made shall be and remain in the said house and premises, and be surrendered to the said executor with the said house and premises at the end of the said term of two years.

And as a full compensation for the same, the said executor stipulates and agrees to allow to the said King a credit of four hundred and fifty dollars out of the last three months' rent of the aforesaid term of two years. And the said executor further agrees that as soon as a new public culvert shall be constructed on Seventh street in front of said premises, of sufficient depth to effectually drain the cellars thereof, he will construct a small culvert or pipe leading from the front area wall to the said public culvert.

378 And it is further agreed between the said parties, that if the said King shall, at any time before the first day of November, 1862, notify the said executor in writing that he desires to extend this agreement for one year beyond the expiration of the aforesaid term of two years, upon the payment of the same monthly rent as herein stipulated for the said two years, then this

agreement shall be considered to be extended to the first day of May, 1864, and to be of the same force and effect as if it had been made for three years instead of two years.

Witness the hands and seals of the parties aforesaid the day and year first herein written.

JOHN P. INGLE, [SEAL.]
Ex. of A. R. Dermott.
H. J. KING. [SEAL.]

Signed, sealed, and delivered in presence of—
E. B. CURTIS.

J. P. I.

379 [Copy.]

J. H. I.

Articles of demise and covenant made and concluded this first day of April, in the year eighteen hundred and sixty-three, between John H. Ingle, administrator de bonis non of the estate o fAnne R. Dermott, of the one part, and Hiram J. King of the other part, both the said administrator and the said King being of the city of Washington, witnesseth, that the said administrator as aforesaid has granted, leased, and demised, and by these presents doth grant, lease, and demise, unto the siad King, for and in consideration of the rents, covenants, and agreements hereinafter covenanted and agreed to be paid, kept, and performed on the part of the said, King all that house and premises situate at the southeast corner of square No. 432, in the city of Washington, belonging to the estate of the late Anne R. Dermott, except the three stores on the ground floor thereof which front Market space, and the cellars under and vaults in front thereof, that is to say,
380 all of the said house and premises which the said King now has in possession, for the term of three years from the first day of May next, fully to be completed and ended, he, the said King, yielding and paying therefor to the said administrator for and during the said term of three years the monthly rent of $175 monthly, and every month during the said term of three years, that is to say, on the last day of every calendar month during the said term.

And the said parties do by these presents covenant and agree, the one with the other, as follows, that is to say, that he, the said King, shall not and will not, at any time or times during the said term, assign or underlet the said premises, or any part or parcel thereof, for any term or time whatsoever, to any person or persons whatsoever, without the express consent in writing of the said administrator, excepting, however, the two store rooms fronting on Seventh street, with their appropriate parts of the cellar, which the said King is at liberty to
381 underlet, and it is by these presents stipulated and agreed between the said parties, and these presents are made and constituted upon the express condition, that if the said King shall at any time or times hereafter during the said term so assign or underlet the said demised premises, or any part or parcel thereof excepting as hereinbefore excepted, without such consent as aforesaid, then and in that case the said term shall, at the sole option and election of the said administrator, utterly cease and determine. And the said administrator shall and may, at his sole option and election, immediately thereupon re-enter upon and repossess himself of the said demised premises, and expel therefrom the said King and every assignee or under tenant who may be found in possession; and the said King on his part covenants and agrees that he will, at his own proper cost, keep the said demised premises and their appurtenances in good order. And that he will deliver all the said demised premises and
382 their appurtenances unto the said administrator at the end of the aforesaid

term of three years, in such good order and condition, the ordinary and inevitable wear and accident excepted.

Witness the hands and seals of the parties aforesaid, the day and year first herein written.

JOHN H. INGLES, [SEAL.]
Administrator, &c.
H. J. KING. [SEAL.]

Signed, sealed, and delivered in presence of—
JAS. E. BLISS.

I hereby consent to extend the within lease to H. J. King for one year from the expiration thereof at the same rent therein stated, on the conditions that he shall at his own expense renew the eaves, troughs, and spoutings where necessary; perform the repairs of the alley, the kitchen floor and roof, and closet roof, and keep the same in good condition.

(Signed) JOHN H. INGLE, *Adm'r, &c.*

I accept the renewal of the within lease on the terms and conditions
383 above stated.

(Signed) H. J. KING.

Witness: DANIEL BIXBY, JR.

March 16, 1866.

ZEPH. JONES
vs.
STRINGFELLOW et al. } 502 equity, Doc. 7.

Ordered this 11th June, 1865, that the matter of this petition stand for hearing on the 13th June, 1866, provided a copy of the same and this order be served on the solicitor of said Zephaniah Jones on or before the 12th June, 1866.

By order of the court.

384 Z. JONES
vs.
STRINGFELLOW et al. } In equity, 502.

Service of copy of petition of Dade Hooe and other heirs of Anne R. Dermott filed this 11th June, 1866, in above case acknowledge this June, 1866.

For Z. JONES,
W. D. DAVIDGE.

Z. JONES
vs.
STRINGFELLOW et al. } In equity, No. 502.

The above defendants except to the affidavits of George H. Morgan and Robert A. Morgan, marked A and B, filed with the answer of Z. Jones, because the same were taken ex parte without notice to the defendants or any of them, and the same cannot be read or considered in this cause.

R. J. BRENT,
For def'ts who have appeared.

385 JONES
vs.
STRINGFELLOW et al. } In equity, 502.

The above named defendants except to the following ex parte affidavits filed in this case as inadmissable and incompetent as evidence:

1. The affidavits of Henry Thorn, J. A. Ruff, J. C. McKelden, W. B. Wil-

liams, H. F. Zimmerman, Douglas Moore, M. G. Emery, J. W. Callan, J. H. Johnson, filed as exhibit to petition of 8th June, 1866.

R. J. BRENT,
For def'ts who have appeared.

In the supreme court of the District of Columbia.

ZEPHANIAH JONES
vs.
HORACE STRINGFELLOW. } Equity, No. 502.

The petition of Zephaniah Jones in the above entitled cause for an
386 injunction and the appointment of a receiver having been argued by counsel, it is this 14th day of June, 1866, ordered by the court that Jesse B. Wilson be, and is hereby, appointed a receiver, with authority to take the charge and possession of the real estate in the bill mentioned, whereof the said Anne R. Dermott died seized, and to manage the same and collect the rents and profits thereof, and to pay over and apply said rents and profits and also the amount collected by said Wilson, as receiver, heretofore appointed by this court in the cause of Dade Hooe and others against said Ingle to the specific liens upon said property in the order of their priority; and it is further ordered that the said Jesse B. Wilson, before he proceeds to act as receiver, shall file his bond to the United States in the penalty of twenty thousand dollars, and with a surety or sureties to be approved by one of the judges of this court, and conditioned for the faithful performance of the trust reposed in him by this order, or which may be reposed in him by any future order or
387 decree in the premises; and it is further ordered that a writ of injunction be issued as prayed; and it is further ordered that the auditor be, and he is hereby, directed to ascertain and report to this court the balance of rents and benefits now in the hands of John H. Ingle, any allowances to which he may be entitled.

By order of the court.

DADE HOOE et als.
vs.
Z. JONES. } In equity, No. 502.

The petition of Dade Hooe, Lucy V. Daniel, and May D. Hooe respectfully sheweth that the said Jones has answered their petition filed 23d May, 1866, and they now desire an opportunity, under the direction of this court, to take testimony to substantiate the allegations in said petition, wherefore they pray that the court will not act on said petition until they have had a reasonable
388 time to take evidence, under the order of this court or otherwise, to sustain said allegations on their part.

R. J. BRENT, *for Petitioners.*

In open court personally appeared, this 14th June, 1866, James Farrow, and made oath that he is the attorney in fact of said petitioners now in the State of Virginia, and from his personal knowledge and belief he has reason to believe, and does verily believe, from facts known to him, that the allegations of said petition can be established by competent testimony, if time is allowed by the court to obtain the same.

JAS. FARROW, *Attorney in fact.*

Subscribed and sworn to before me this 14th day of June, 1866.

R. J. MEIGS, *Clerk.*

Ordered this 14th day of June, 1866, that the prayer of this petition be, and the same is, refused.

By order of the court.

389 Z. JONES *vs.* STRINGFELLOW et al. } In equity, No. 502.

To the hon. the supreme court of the District of Columbia in chancery:

The petition of the above defendants, who have answered, respectfully sheweth that while an application was pending on the files of this court to allow your petitioners, Dade Hooe, Lucy V. Daniel, and Mary D. Hooe, to file a new answer, on the grounds set forth in their petition on file in this cause, the complainant's counsel caused the evidence taken on the part of the complainant to be returned to this court, and the court ordered publication thereof against the exceptions of your petitioners now on file in this cause.

Your petitioners further showeth that said depositions on the part of said complainant have only been closed before the examiner of the court on
390 the 2d day of June, 1866, and your petitioners are advised and charge that they are entitled to an extension of time to take depositions for the purpose of rebutting the evidence taken on the part of the plaintiff Jones, and also to file certain testimony on their part mentioned in the return of said examiner as being stipulated for.

Wherefore your petitioners pray that an order may be passed enlarging the time for taking rebutting evidence on the part of your petitioners; and as in duty will ever pray.

R. J. BRENT, *for Petitioners.*

Exceptions to the depositions returned and published in this cause.

Z. JONES *vs.* STRINGFELLOW et al. } In equity, No. 502.

The defendants, who have appeared and answered, except to the depo-
391 sitions returned and filed on the part of the complainants—

1. Because they have been returned and published without any opportunity to the defendants to take rebutting evidence.

2. Because the examiner has, under the direction of the complainant's solicitor, returned said depositions without filing or causing to be filed, or giving the defendants an opportunity to file the testimony given by the witness, Walker, on the trial at law, as agreed before the said examiner.

R. J. BRENT, *for Petitioners.*

Ordered this 14th day of June, 1866, that the prayer of defendants to take testimony be, and the same is hereby, refused.

By order of the court.

392 JONES *vs.* STRINGFELLOW. } 502.—Chancery.

On the petition of Dade Hooe, Mary D. Hooe, and Lucy T. Daniel to withdraw their answer filed in the above-entitled cause, and the answer of the complainant to said petition, it is ordered this 14th day of June, 1866, that the prayer of said petition be not granted.

By order of the court.

Petition for receiver and an injunction.

Z. JONES
vs.
JOHN H. INGLE.

The above John H. Ingle prays an appeal in open court from the order this day passed on the above petition.

R. J. BRENT,
Per J. H. INGLE.

June 14, 1866.

Know all men by these presents, that we, Jesse B. Wilson, Charles Edmunston, Presley W. Dorsey, all of the city of Washington, in the District
393 of Columbia, are held and firmly bound unto the United States of America in the full and just sum of twenty thousand ($20,000) dollars lawful money, to be paid to the said United States or their certain attorney, to which payment well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated this fourteenth day of June, in the year eighteen hundred and sixty-six.

Whereas by an order of the supreme court of the District of Columbia, in chancery, passed in the cause of Zephaniah Jones against Horace Stringfellow and others, and dated fourteenth day of June, eighteen hundred and sixty-six, the said Jesse B. Wilson was appointed receiver, with the authority and duties in and by said order mentioned: Now the condition of the above obligation is such, that if the said Jesse B. wilson do and shall well and truly perform and discharge all and singular the functions and duties reposed in him by
394 the said order, and which may be reposed in him by any future order or decree in the premises, then the said obligation shall be void, but otherwise of full force and virtue in law.

J. B. WILSON. [SEAL.]
CHARLES EDMONSTON. [SEAL.]
P. W. DORSEY. [SEAL.]

Witness the signatures:
P. R. WILSON.

Approved. ANDREW WYLIE.

Z. JONES
vs.
STRINGFELLOW et al. } In equity, 502.

To the honorable the supreme court of the District of Columbia, in chancery:

The petition of the defendants in the above cause, who have appeared and answered, respectfully showeth that the above cause was only placed at issue on the 6th day of March, 1866, and the complainants continued to take
395 his testimony in chief until the 2d day of June, 1866, when he examined his last witness, and caused his said testimony to be filed in court on the 2d day of June, 1866, and on the 8th day of June, 1866, the court ordered publication of said evidence against the exceptions of these defendants. That on the 14th June, 1866, your petitioners filed a petition for an enlargement of time to take rebutting evidence to that taken by the complainant, and some of your petitioners filed their petition for time to take evidence in support of their petition filed on 23 May, 1866, but the court refused the said petition to take evidence in support of said petition of 23 May, and the said court hath as yet passed no order on said petition for time to take rebutting evidence to that taken by the complainant.

Your petitioners are advised and charge that, according to the spirit and intention of the rule of the Supreme Court of the United States, they are entitled to an enlargement of the time for taking evidence on their part,
396 and they deny that they are in any default in the premises, or were under any obligation to take testimony until the complainant had closed his evidence as aforesaid. And your petitioners aver that they are prepared by material, competent, and credible witnesses to show that the claim of said complainant is unfounded in fact and in law, if they are allowed an opportunity to take said evidence; that they do not ask any postponement or delay for the purpose of taking said testimony, but are willing to be limited for the taking of such testimony to the next special term of this court, before which this cause cannot be heard under the rules and practice of this court.

Wherefore your petitioners pray that the time for taking testimony on their part may be enlarged.

R. J. BRENT, *for Petitioners.*

In open court this 18th day of June, 1866, personally appeared James Farrow, and makes oath that, as attorney in fact of various of said petitioners who
397 are now residents of this District, he is well acquainted with the defence of this cause, and that the facts, as related in the aforesaid petition, are true, to the best of his knowledge and belief.

JAS. FARROW.

Sworn before me June 18, 1866.

R. J. MEIGS, *Clerk.*

This petition having been presented to the court, and duly considered, it is this 19th day of June, 1866, ordered that the prayer of the petitioner be refused.

By order of the court.

398 In the supreme court of the District of Columbia.

ZEPH. JONES. *vs.* DERMOTT'S adm'r d. b. n. } Report

Pursuant to order of reference in the above case to ascertain the proportion of assets in the hands of the defend't, to which the judgment against him in favor of the plaintiff is entitled, I gave notice to the defendant and his counsel, and Messrs. Bradley and Davidge, consel of the plaintiff.

The defendant has appeared, and also Messrs. Brent and Davidge.

The defendant is adm'r de bonis non, with the will of said Ann Dermott annexed. By her will she authorized her executors to collect the rents of her real estate, and to apply the same to the payment of her debts.

399 The defendant has presented to me a statement, showing that he has collected rents from the real estate, amounting to $10,433 33, and that he has paid on account of mortgages and liens charged on the real estate the sum of $9,196 54, leaving the sum of $1,236 79 in his hands. He further states that the specific liens on the real estate may greatly exceed the said balance.

As to the personal estate which has come under his control, he states through his counsel, R. J. Brent, esq., that a judgment has been recovered against Wallach and Gideon, amounting to $4,500, thereabouts; and that his said counsel has collected on account thereof the sum of $1,500; that he retains $500 on account of his fees in recovering said judgment, leaving $1,000 to be accounted for; and he further states as aforesaid that he is entitled to credit for $1,000 for fees paid to Mr. Brent in conducting the defence in the above suit of the plaintiff

in the circuit and supreme courts of the District and in the Supreme Court of the United States. His statement of fees paid amounts to $1,200; but
400 the first $200 on the list belongs to the account of his predecessor in the trust. The cost of this reference and audit, $21 42, he has paid, and the balance of $215 37 will not be more than sufficient to meet the legal fees of the contest which is still going on. And the defendant further states that he knows of no other personal assets, except said judgment against said Wallach and Gideon.

Upon this statement I report that there are no present assets in the defendants' hands which can be applied to the said judgment of the plaintiff, and that the final judgment can be entered only for assets as they may arise.

W. REDIN, *Auditor.*

The above is believed to be a true copy of the report I made the 7th July last, in the above cause, taken from my draft thereof.

W. REDIN, *Auditor.*

5th June, 1866.

401 The original, of which the above is certified by the auditor to be true copy, was filed in this office as stated by him, and was by me placed in the file of papers to which it belongs, No. 1,458 Law.

June 6, 1866.

R. J. MEIGS, *Clerk.*

A true copy. Attest:

R. J. MEIGS, *Clerk.*

402 ZEPH. JONES *vs.* J. H. INGLE and OTHERS. } No. , equity.

The present reference is to ascertain the precise balance in the hands of J. H. Ingle from rents collected by him from the real estate of Ann R. Dermott. He is administrator de bonis non with her will annexed, and also acting executor of the late John P. Ingle, who was one of Miss Dermott's executors, and the only one who qualified.

He has presented two accounts of the rents, one embracing the collections and expenditures of his testator, John P. Ingle, and the other his own. He has also presented a list of the debts owing by Miss Dermott, over and besides the debt due to Zeph. Jones. These accounts are filed in the cause of Dade Hooe and others *ag't* Ingle, No. 642.

The account of John P. Ingle's doings shows receipts from Oct., 1860, to 13 Jan'y, 1863, amounting to $10,714 37, and payments, chiefly on account of debts secured on the premises, of $11,528 44, being an overpayment of
403 $814 12. No charge for commission is made in this account, which at 5 per cent., the amount claimed by the defendant, on the receipts amounts to $535 71, and, added to the balance of $814 12, makes the sum of $1,349 83 now due to the estate of J. P. Ingle.

The defendant's own account of his receipt of rents commences the 1st April, 1863, and terminates the 16th March, 1866, amounting to $15,813 33. To these receipts must be added $501 66 for rent received subsequent to the 16th March and prior to the injunction, making an aggregate of receipts by the defendant of $16,314 99. His payments during the same period, on account of debts due from Miss Dermott's counsel fees for the trial and argument of the divers suits and contests between Z. Jones and Miss Dermott's adm'r, and Wallack and his sureties, between Jan'y, 1864, and May, 1865, taxes, repairs, and his own commission at 5 per cent., amount to $12,568 24, and leaving a balance in his

hands of $3,746 75. This account is annexed hereto, and the vouchers have been examined.

No objection or exception has been made or taken before me to any 404 item in these accounts.

I have allowed John H. Ingle, as executor of John P. Ingle, to pay himself the advances and overpayment of his testator, amounting to $1,349 83 out of the said balance of $3,746 75 and $27 90, the expense of this audit, leaving the sum of $2,369 02 in his hands to be accounted for.

His account as adm'r d. c. n. of the personal estate, and his receipts as such, stands as it did when I made the report thereon on the 7th July, 1865, except the sum of $200 received in compromise of a judgment against Barrack Hall. His account as adm'r de bonis non is unsettled and remains to be adjusted, but is not understood to be embraced in this suit and reference.

W. REDIN, *Auditor.*

21st June, 1866.

405 *Estate of A. R. Dermott in ac. with J. H. Ingle, adr., &c.*

Dr.				Cr.			
1863.	To cash paid—			1863.	By cash of—		
Mar. 24	Robbins		$4 50	April 1	King		$700 00
April 1	King		450 00	4	Leuzberg		105 00
10	Smith		34 50	6	Meyenberg		225 00
May 11	Insurance		50 25	22	Carter		274 98
	Do		50 25	May 4	Leuzberg		35 00
	Bolton		15 00	June 1	....do		35 00
July 11	Smith		34 50	2	Casey		175 00
11	Insurance		50 25	4	Meyenberg		150 00
21	Bolton		15 00		Carter		183 33
24	Hayward & Co		250 00	July 2	Casey		175 00
29	Wilmer		472 90		Leuzberg		35 00
	Do		124 33	8	Meyenberg		75 00
	Do		201 87		Carter		91 66
Aug. 22	Beale		10 00	Aug. 1	Casey		175 00
Sept. 19	Taxes		360 49	3	Leuzberg		35 00
Oct. 2	Bolton		15 00	4	Carter		91 66
10	Smith		34 50		Meyenberg		75 00
Nov. 9	Insurance		37 75	Sept. 5	Casey		175 00
1864.							
Jan. 4	Bolton		15 00		Leuzberg		35 00
11	Smith		34 50		Meyenberg		75 00
23	Brent		300 00		Carter		91 66
Feb. 2	Wilmer		624 33	Oct. 2	Casey		175 00
24	Toy		30 00	4	Leuzberg		35 00
April 1	Bolton		15 00		Meyenberg		75 00
May 9	Sup. C't		59 47		Carter		91 66
11	Insurance		100 50	Nov. 2	Casey		175 00
June 25	Bk. met		97 65		Leuzberg		35 00
406							
July 15	Bolton		15 00	13	Meyenberg		75 00
19	Hodge		50 25	Dec. 3	Leuzberg		35 00
29	Wilmer		753 83		Casey		175 00
May 16	Brent		20 00	4	Meyenberg		75 00
				1864.			
Sept. 26	Meigs		8 50	Jan. 2	Casey		175 00
	Brent		300 00		Carter		183 33
30	Taxes		593 67		Meyenberg		75 00
Oct. 2	Bolton		15 00		Leuzberg		35 00
25	Smith		103 50	Feb. 2	Casey		175 00
Nov. 11	Insee		37 75		Meyenberg		75 00
28	Wivel		8 00		Leuzberg		35 00
Dec. 1	Carter		35 00	Mar. 1	Casey		175 00
					Leuzberg		35 00
				4	Meyenberg		75 00
				April 1	Casey		175 00
					Leuzberg		35 00
				4	Meyenberg		75 00
				May 1	Casey		175 00
					Leuzberg		35 00
				4	Meyenberg		75 00
				June 1	Casey		175 00
1865.	To cash per—				By cash of—		
Jan. 3	Bolton		15 00	1	Leuzberg		35 00
13	Gideons		15 00	4	Meyenberg		75 00
14	Brent		300 00	July 1	Casey		175 00
Feb. 1	Register		50		Leuzberg		35 00
7	Wilmer		2,090 00	4	Meyenberg		75 00
27	Herd		18 00	Aug. 3	Leuzberg		35 00
407							
	Marshal		2 00	Aug. 4	King		175 00
	Witnesses		22 50	Sept. 1	Leutzberg		35 00

Estate of A. R. Dermott, &c.

Dr.				Cr.		
1865.	To cash per—		1864.	By cash of—	
March 24	Brent	$75 00	Sept. 9	Meyenberg	$150 00
	Do	400 00	Oct. 3	King	350 00
	Bolton	15 00		Leuzberg	35 00
April 5	Smith	69 00	Nov. 1	....do	35 00
9	Insurance	100 50	2	Meyenberg	150 00
May 11	Bolton	15 00		King	175 00
July 1	Redin	21 42	Dec. 1	Leuzberg	35 00
7	Taxes	546 57		Carter	1,100 05
Aug. 31	Insurance	50 25	10	King	175 00
	Lamon	13 50	1865.		
Oct. 1	Hanson	5 00	Jan. 3	Leuzberg	35 00
4	Scott	407 46		King	175 00
7	Insurance	37 75		Meyenberg	150 00
Nov. 10			Feb. —	King	175 00
1866.	Wilmer	1,060 00		Meyenberg	150 00
Jan'y 3	Welker	45 00	March 1	....do	35 00
Ap'l 24				King	175 00
408			7	Meyenberg	150 00
			April 1	Leuzberg	35 00
			3	King	175 00
			5	Meyenberg	125 00
			May 2	Leuzberg	35 00
				King	175 00
			5	Meyenberg	125 00
			June 2	Leuzberg	35 00
				King	175 00
			July 3	Leuzberg	35 00
			5	King	175 00
				Meyenberg	250 00
			Aug. 1	Leuzberg	35 00
			Sept. 1	....do	35 00
			4	King	350 00
			6	Carter	1,275 00
				Meyenberg	250 00
			Oct 2	Leuzberg	35 00
			3	King	175 00
			Nov. 1	....do	175 00
				Leuzberg	35 00
			Dec. 1	King	175 00
			2	Leuzberg	35 00
			1865.	By cash of—	
	To commissions, 5 pr. cent. on am't collected	815 75	Dec. 4	Carter	500 00
			5	Meyenberg	375 00
	To am't due J. P. Ingles, ex'or, as per ac. filed in Hooe *vs.*		1866.		
			Jan. 4	King	175 00
	Ingle	1,349 83	5	Leuzberg	35 00
	Balance	2,396 92		Meyenberg	125 00
			Feb. 1	Leuzberg	35 00
			7	Meyenberg	125 00
			8	King	175 00
			Mch. 1	Leuzberg	35 00
			5	Carter	500 00
			15	Selby & Y	125 00
			16	King	175 00
			April 4	....do	175 00
				Carter	166 66
				Leuzberg	35 00
				Selby & Y	125 00
		16,314 99			16,314 99
				By bal. down	2,396 92

409 ZEPHANIAH JONES
vs.
HORACE STRINGFELLOW et al. } In equity, No. 502.

To the honorable the supreme court of the District of Columbia:

The petition of Maria S. Anderson, Jane S. Farrow, Eliza L. Ballew, Susan W. Garlington, relict of John Garlington, dec'd, and Benjamin S. James, in his own right and behalf, and also, as administrator of George S. James, his dec'd brother, respectfully shows that they are citizens and residents of Laurens district, in the State of South Carolina, the aforesaid Maria S., Jane S., Eliza L., and Susan W. being daughters of Benjamin James, dec'd, who was a brother to the mother of Miss Ann R. Dermott, dec'd, late of the city of Washington, in the District of Columbia, and stand in the same degree of consanguinity to the said Ann R. Dermott, dec'd, as Dade Hooe, Lucy J. Daniels, and Mary D. Hooe, of the State of Virginia, children of , deceased, who was the sister to the mother of the late Miss Ann R. Dermott; that besides your petitioners, the daughters of the said Benjamin James, dec'd, he left two
410 sons, Robert B. James, now living in the State of Alabama, and John Stobe James, who died some years before the said Ann R. Dermott, leaving five children, viz: Benjamin S. James, your petitioner, George S. James, who died since the death of the said Ann R. Dermott, and upon whose estate your petitioner, the said Benjamin S. James, has administered, and Hellen M. Crossan, wife of James M. Crossen, of the State of Texas, by a first marriage, and O Neale James, and Jane Stobe, wife of Green Underwood, now residing in the State of Alabama, by a second.

Your petitioner further shows unto to your honor that a short time before the commencement of the unhappy war between the north and the south they had learned of the death of their relative, the said Miss Ann R. Dermott, and at the same time that she had left of force and unrevoked a last will and testament, in which, after directing the payment of her debts, and disposing of certain specific legacies, she devised and bequeathed the residue (consisting of the great bulk of her estate) to certain charitable uses; and although your petitioners are now informed and believe that the devise to the charity aforesaid is null and
411 void, and has been so regarded by the legal profession since the death of the said testatrix, nevertheless, on account of the suspension of all intercourse between the two sections of country by the war, they had never heard or did not doubt but that the said estate was fully and effectually disposed of by the said will and testament, nor ever heard or had any reason to believe that they were entitled, or as heirs at law or otherwise, to any right or interest in said estate until in the month of , A. D. 1865, and then only in the manner and to the intent as herein set forth:

At the period mentioned, which was immediately upon the opening of communication between the north and the south, there came to the village of Laurens, in the interior of the State of South Carolina, where your petitioner resided, a person, who called at the respective residences of your petitioners, and who was introduced to them as a Mr. Morgan, since ascertained to be R. S. Morgan, of the city of Washington, D. C., who represented himself as the agent and partner in business of his brother, George H. Morgan, a lawyer, residing in said city, and as the agent and attorney of Dade Hooe and his sister, of Stafford,
412 in the State of Virginia, relatives of your petitioners, and next of kin and heirs-at-law of the said Ann R. Dermott, dec'd, and that he had just come from the said Dade Hooe and his sister (who had employed them, the said Morgans) to look after their interests as next of kin and heirs-at-law of the said Ann R. Dermott, dec'd, for the purpose of conferring with your petitioners (others of the heirs-at-law) as to their rights and interests in the estate of the said deceased, and would inform and advise your petitioners, as they had so

done the said Dade Hooe and his sister, that one Zephaniah Jones, of the city of Washington, by a bill filed in the supreme court of the District of Columbia, against Horace Stringfellow and others, representing the estate of the said Ann R. Dermott, dec'd, for the recovery of a large sum of money justly due the said Zephaniah Jones, and had raised the question as to the validity of the devise in the will of the said deceased for charitable purposes, would be greatly to their interest as well as to the interest of all the heirs of said deceased (who were made parties defendants to the said bill) to answer the bill by admitting the indebtedness claimed by the said Jones, which was just and meritorious,
413 and consenting that the real estate of said deceased might be sold, which, if decreed by the court, would so embarrass the estate that it would be impracticable to carry out the charitable devise contained in the said will, and it would therefore be totally defeated, and a large estate would be left for distribution among the heirs-at-law, and that, in accordance with this advice, the said Dade Hooe and his sisters had answered the bill as they had been advised, and had executed an agreement by which they had obligated themselves to pay the said Morgan one-third part of whatever they might recover from the said estate for their benefit, and insisted that your petitioners and others, of the next of kin and heirs-at-law of the said deceased, should pursue a similar course, and submitted for their action a prepared answer and agreement, which he assured your petitioners had been signed by the said Dade Hooe and his sisters, and further urged that unless your petitioners and others of the heirs-at-law should adopt this course, that under alterations which had been made in the courts of the District of Columbia, and the practice of the courts during *during*
414 the war, and other disabilities under which your petitioners would be placed, your petitioners would be precluded except by these proceedings from asserting their rights as heirs-at-law to the said estate, and that it would remain in the hands of the trustees of the estate to be preyed upon by them and their attorneys for their individual benefit.

Under these representations, your petitioners being in utter ignorance of their rights and of the condition of the said estate, except as represented to them by the said Morgan, as well as to the merit of the claim of the said Jones, were greatly at a loss to know what to do, but fearing that unless they made some answer, they would hereafter be precluded as the said Morgan had represented to them, from all opportunity of asserting their rights as heirs at law, and being in a condition (consequent upon the overthrow of the confederacy) in which they neither had the means, nor the opportunity of informing themselves as to their rights, they prepared and signed the answer, which is now on file in the said cause, and which they were induced to make, from the representations of the said Morgan that, unless they made answer they would be hereafter barred
415 from asserting their rights, and not for the purpose of waiving any legal exception or defence which they at that time had, or may have had, to the claim of the said Jones; and they aver that while they refused to admit the justness of the claim of the said Jones, (and in this did not accede to all the suggestions and advice of the said Morgan,) yet, so far as did act, it was upon his representations and advice, believing in the truth and the sincerity of the representations which he had made to them; but your petitioners have since discovered that they have been greviously misled, and grossly deceived, as to their rights and interests, and have reason to believe, and do verily believe, and charge that the said Morgan was employed by the said Zephaniah Jones, or his agents, to approach your petitioners and make the representations hereinbefore mentioned, which misled and deceived your petitioners, and that all such representations and statements of the said Morgan are in law and in fact the actings and doings of the said Zephaniah Jones, and have inured wrongfully and injuriously, so far as the rights of your petitioners are concerned, to the benefit of the said Jones, by inducing your petitioners to put in their answer afore-

said in ignorance of all the facts pertaining to their rights and interests in the premises; and further charge that said statements and representations of the said Morgan were false in material particulars, and calculated to mislead your petioners; especially, that your petitioners could not contest the validity of the charitable devise in the will of the said Ann R. Dermott, dec'd, except through the instrumentality of the proceedings instituted by the said Jones, and in order to do this successfully, that no obstacle should be interposed to the claim of the said Jones, which was just and meritorious, and which had been repeatedly adjudged in his favor, and the realization of which could only alone defeat the charitable devise by compelling the sale of the estate, and so diminishing it as to render the said devise impracticable, and therefore null and void; and that the trustees and attorneys of the said estate were using and squandering the same for their own benefit; and your petitioners believe, and do charge that, the whole scheme and design of the said Jones in sending said Morgan to your petitioners, was for the express purpose of taking undue and unfair advantage of their condition and ignorance, and by fraud and contrivance to obtain from them such advantage, all of which is contrary to equity and good conscience, and has tended manifestly to the injury of your petitioners, by inducing them to make their answer in ignorance of the points and facts appertaining to the merits of the claim of the said Zephaniah Jones, and of their rights and interests as heirs at law of the said Ann R Dermott, dec'd, and that their said answer should be annulled, vacated, and set aside.

Whereupon, your petitioners pray that their said answer so filed, may be taken off the files of this honorable court, and that they may be permitted to answer the bill of the said Zephaniah Jones without prejudice, by reason of their answer aforesaid, and that all necessary amendments and corrections for that purpose may be made, and that your petitioners may have such other and further relief in the premises as to your honors may seem meet.

And your petitioners, as in duty bound, will ever pray, and so forth.

B. S. JAMES.
M. S. ANDERSON.
SUSAN W. GARLINGTON.
ELIZA L. BALLEW.
JANE S. FARROW.

STATE OF SOUTH CAROLINA, *Laurens district:*

Before me, the subscriber, a in and for the State and district aforesaid, personally came Maria S. Anderson, Jane S. Farrow, Eliza L. Ballew, Susan W. Garlington, relict of John Garlington, lately dec'd, and Benjamin S. James, each of whom having been first duly sworn upon the Holy Evangelists of Almighty God, say, each and all, that their signature above, to the petition contained in the nine preceding pages are severally their own, and genuine; that the statements therein contained, as far as they relate to their own actings and doings are true, and so far as they relate to the actings and doings of others they believe them to be true.

B. S. JAMES.
M. S. ANDERSON.
SUSAN M. GARLINGTON.
ELIZA L. BALLEW.
JANE S. FARROW.

Sworn to and subscribed before me, this 5th day of June, A. D. 1866.

H. L. McGOWAN,
Com. in Eq't, L. D., and Mag. ex. off.

419 THE STATE OF SOUTH CAROLINA, *Laurens district:*

I, W. H. Langston, judge of the court of ordinary in and for the State and district aforesaid, do hereby certify, under my hand and seal of office, that Howel L. McGowan, esq., whose genuine signature appears to the foregoing affidavit of Maria S. Anderson, Jane S. Farrow, Eliza L. Ballew, Susan W. Garlington, and Benjamin S. James, is and was, at the date of said affidavit, an acting and legally appointed magistrate, ex officio, in and for the aforesaid State and district; that the foregoing signature purporting to be his is genuine, and that full faith and credit ought to be given to his official acts as well in courts of justice as thereout.

Given at Laurens court-house, in the said district and State aforesaid, under my hand and seal of office, this the 5th day of June, A. D. 1866.

[SEAL.] W. H. LANGSTON, *O. L. D.*

420 This petition of Maria S. Anderson and others, filed June 22, '66, having been presented and duly considered, it is by the court, this 3d day of July, 1866, ordered that the prayer thereof be refused.

By order of the court.

421 Z. JONES *vs.* STRINGFELLOW et als. } In equity, No. 502.

The defendants in the above case, who have appeared and answered, beg leave respectfully to file this their protest against the above case being heard at the present June special term of this court, because the same is not entitled to be heard at this term under the rules and practice of the court, and because the defendants have had no sufficient opportunity *opportunity* allowed them to take rebutting testimony after the evidence-in-chief on the part of the complainant was closed on the 2 June, 1866, and because no opportunity has been allowed to your petitioners, Dade Hooe, Lucy J. Daniels, and Mary S. Hooe, to take evidence in support of the allegations of their petition filed 23 May, 1866, and for other reasons apparent of record in this cause.

R. J. BRENT, *for Defendants.*

422 In the supreme court of the District of Columbia, in chancery.

ZEPHANIAH JONES *vs.* STRINGFELLOW and OTHERS. } No. 502

Depositions for defendants.

DISTRICT OF COLUMBIA, *County of Washington, ss:*

Be it remembered that on this 19th day of June in the year of our Lord one thousand eight hundred and sixty-six, I, Mahlon Ashford, an examiner in chancery, did cause to be personally present, at my office, No. 4 Columbia College Law Building, in the city of Washington, in said District, James Bowen, Amon Duvall, and William L. Ross, to testify on the part and behalf of the defendants in a certain cause now depending in the supreme court of the District of Columbia, wherein Zephaniah Jones is complainant and Horace Stringfellow and others are defendants.

Deposition of James Bowen for defendants.

423 And the said James Bowen, being about the age of 50 years, and being by me first duly sworn to testify the truth, the whole truth, and nothing

but the truth, touching the matter at issue in said cause, I did carefully examine said James Bowen, and he did thereupon depose, testify, and say as follows:

In answer to interrogatories put to him by Mr. Brent: I am a bricklayer by trade; I know the parties to this suit; when complainant was about putting up the walls of the north alley under the avenue and running from 7th street directly west, I noticed that the earth foundation was not very good; it looked to me to be damp and did not seem to me a fit foundation to build a wall upon without placing a footing under it. By a footing I mean a base or surface of stone wider than the base of the wall to spread the pressure on the surface of the ground. The wall was built up without such footing to the best of my knowledge and observation, I seeing it as I passed at the time.

After the first settlement of the walls of the Avenue House and about the time that complainant's men were cutting out the walls over the alley on
424 7th street, I saw complainant on the corner of the avenue and 7th street, and remarked to him that if I was in his place, I would spring an arch over that alley under the window, as I did not think that the walls would stand without such an arch or something to support them. Complainant did not seem to regard my opinion or suggestion of much consequence, but remarked, as near as I can remember, that he guessed it would stand.

JAMES BOWEN.

Sworn to and subscribed before me this 19th day of June, 1866.

M. ASHFORD, *Examiner.*

Deposition of Amon Duvall for defendants.

And the said Amon Duvall, being about the age of 53 years, and being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, touching the matter at issue in said cause, I did carefully examine said Amon Duvall, and he did thereupon depose, testify and say, as follows:

425 In answer to interrogatories put to him by Mr. Brent: I am a resident of this city and am acquainted with the parties to this suit. Before the walls of the Avenue House were put up, I saw the earth foundation of that house and noticed that the earth of this foundation was very wet, especially between the point where the steps of the house now are and the alley opening on 7th street. I noticed that there was blue mud in a soft and miry condition. It was at about this point between the alley and the steps that the walls afterwards cracked and settled while complainant was building it. When complainant left the building the walls were cracked and appeared to me to be out of plumb, and I did not consider it safe to live in the house, and remarked so at the time to several persons. On the 7th street front the window sills were out of plumb.

AMON DUVALL.

Sworn to and subscribed before me this 19th day of June, 1866.

M. ASHFORD, *Examiner.*

426 The examination was here adjourned, to be continued on Wednesday, the 20th of June, 1866.

M. ASHFORD, *Examiner.*

And then, to wit, on the said 20th day of June, in consequence of the non-attendance of witnesses, the said examination was from then adjourned, to be continued on Thursday, the 21st day of June, 1866, at 11 o'clock in the forenoon.

M. ASHFORD, *Examiner.*

And then, to wit, on the said 21st day of June, 1866, the said examination was continued in pursuance of adjournment, when defendants produced and examined one William L. Ross, for and in their behalf.

Deposition of William Ross for defendants.

And the said William L. Ross, being about the age of 45 years, and being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, touching the matter at issue in said cause, I did carefully examine
427 said William Ross, and he did thereupon depose, testify, and say as follows, in answer to interrogatories put to him by defendants' solicitors:

I reside in the city of Washington, and know the parties to this suit, and the subject-matter of the suit.

I had the contract for the plastering of the Avenue House, built by complainant. I know that the foundation of the building was defective, which caused the settling of the wall binding on 7th street, and over the alley-way. The walls were very shaky, and I noticed that while I was plastering them they shook, and I believe that if I had tried, I could have pushed them over with my hands. I have reference to the wall on the west side of the building, over the alley, and not the wall binding on 7th street.

I noticed the foundations when they were being dug out, and observed a good deal of black swampy mud.

By my contract with Mr. Jones, the complainant, I was to have the plastering of the store-rooms fronting on Pennsylvania avenue done by the
428 15th of October of the year that the buildings were commenced, but to the best of my recollections the stores were not ready by that time for me to commence plastering them.

WM. L. ROSS.

Sworn to and subscribed before me this 21st day of June, 1866.

M. ASHFORD, *Examiner.*

DISTRICT OF COLUMBIA, *County of Washington, ss:*

I, Mahlon Ashford, examiner in chancery, do hereby certify that, in pursuance of the order referred to in annexed affidavit, the foregoing depositions were taken down and by me reduced to writing in the presence of and from the statement of the witnesses, at the time and place designated in the caption thereof, and were then and there by me read over to the witnesses and by them subscribed in my presence and in presence of defendants' solicitor, who was then and there attending, the witnesses having been by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, touching the
429 matters at issue in said cause. I further certify, that I am not of counsel for any of the parties to said cause, or in any manner interested therein, and that at the taking of said testimony the complainant aforesaid was not present, either in person or by solicitor.

M. ASHFORD, *Examiner, &c.*

430 STRINGFELLOW *et al.* *vs.* Z. JONES. } In equity.—No. 502.

In open court this 22d June, 1866, personally appeared J. Hall Colgate, and made oath on the Holy Evangely of Almighty God, that on the 10th June, 1866, this deponent, at the request of R. J. Brent, solicitor for defendants, served on Walter Davidge, solicitor for Zephaniah Jones, a written notice from Mahlon Ashford, examiner, that at the instance of the above defendants, he would, at eleven o'clock a. m. on the 19 June, 1866, at his office, in the city of Washington, take testimony, and said Davidge acknowledged service in pencil-writing

thereon, remarking at the time that he would sign it, but he did not want any notice, as the case was gone up, or words to that effect, and said notice so served was handed by me to said Brent; and at the same time appears R. J. Brent and made oath that he did receive the notice so subscribed by Mr. Davidge, as
431 related by J. Hall Colgate above, and has lost or mislaid the same, as he is unable to find it after due and diligent search in all proper places.

J. H. COLGATE.
ROBERT J. BRENT.

Subscribed and sworn to before me, June 22, 1866.

R. J. MEIGS, *Clerk.*

Upon the motion of W. D. Davidge, solicitor for the complainant, this cause is hereby set down for final hearing for July special term, 1866, this twenty-second June, 1866.

By the court.

432 Supreme court, D. C.

JONES
vs.
STRINGFELLOW *et al.* } No. 502.—Equity.

To the honorable the justices of the supreme court of the District of Columbia, sitting in equity:

The petition of George W. Tubman, executor under and by virtue of the last will and testament of Mary E. Wilmer, late of Charles county and State of Maryland, deceased, respectfully showeth to your honors, that Anne R. Dermott, late of the District of Columbia, died on or about the day of , A. D. 18 , having first by her last will and testament, duly admitted to probate in the orphans' court of the District of Columbia, appointed John P. Ingle, late of said District, now deceased, her sole executor; that said executor died on or about the day of , A. D. 186 , without having fully administered said estate, and the defendant, John H. Ingle, has taken out letters of administration de bonis non c. & a. upon the estate of said Anne R. Dermott. Your petitioner further shows to your honors the said Ann R. Dermott was in her lifetime largely indebted to the said Mary E. Wilmer, and her said executor and
433 the said administrator d. b. n. c. t. a. have often recognized said indebtedness, have made payments thereon, and promised to pay further sums, as money came into their hands, belonging to said estate. Your petitioner further shows to your honors that the said Ann R., as evidences of said indebtedness in her lifetime, passed to the said Mary E. Wilmer one bond for four hundred and fifty-five dollars, one promissory note for one hundred and twenty-five dollars, one promissory note for eight hundred and sixty-four $\frac{45}{100}$ dollars, and one for five hundred and eighty-one $\frac{46}{100}$ dollars, true copies of which said bond and notes are hereby annexed, and made part hereof, and that there remains still due the whole of the principal of said bond and notes, as well as a portion of the interest.

Your petitioner is advised that this cause is a proceeding instituted to appoint a receiver for the assets of the estate of said Ann R. Dermott, and for other purposes, among which is the payment of the just debts of said testatrix; and your petitioner is further advised she is entitled to receive payment of the debts so due as aforesaid upon filing this his petition, and furnishing the necessary proof, &c., of the justness thereof, and that payment may be made, and such other relief granted by your honors, he ever prays, &c.

(S'g'd) BRADLEY & BRADLEY, *Sol'r.*

434 MARYLAND, *ss* :

The State of Maryland to all to whom these presents shall come, greeting:

Know ye, that the last will and testament of Mary E. Wilmer, late of Charles county, dec'd, hath in due form of law been exhibited, proved, and recorded in the office of the register of wills for Charles county, a copy of which is to these presents annexed, and administration of all the goods, chattels, and credits of said deceased is hereby granted and committed unto George W. Tubman, the executor by the said will appointed.

Witness Richard Barnes, chief judge of the orphans' court for Charles county, this 24th day of April, in the year of our Lord eighteen hundred and sixty-six.

[SEAL.]

Test: JOSEPH STEWART,
Register of Wills for Charles County.

435 (Copy.)

Know all men by these presents, that I, Ann R. Dermott, am held and firmly bound to Mary E. Wilmer in the full and just sum of five hundred and ten dollars lawful money of the U. States, to be paid to the said Mary E. Wilmer, her ex'rs, adm'rs, or assigns on demand, to which payments well and truly to be made I bind myself, my heirs, ex'rs, & adm'rs, firmly by these presents.

Witness my hand and seal this twenty-eighth day of January, A. D. 1851.

The condition of the above obligation is this: If the above bound Ann R. Dermott, her heirs, ex'rs, or adm'rs, shall and do well and truly pay to the said Mary E. Wilmer, her ex'rs, adm'rs, or assigns, the sum of two hundred and fifty-five dollars lawful money of the U. States, on or before the 28th day of January, in the year one thousand eight hundred and fifty-eight, with legal interest thereon, to be paid in two equal half-yearly instalments yearly and every year until the said principal sum shall be fully paid and discharged, then the above obligation to be null & void, otherwise to be and remain in full force and virtue.

(Signed) ANN R. DERMOTT. [s.]

Witness: W. H. CLAGETT.

Memorandum.

436 The foregoing writing obligation constitutes one of the debts referred to and provided for in the deed of trust to Richard Smith, executed by me on the 28th day of January last, and the property conveyed in and by the said deed is to be held, and in all respects dealt with, as collateral security for the debt secured by the said writing obligation in like manner and equally so the other debts mentioned and provided for in the said deed.

Witness my hand and seal on this day of the date of the said writing obligatory.

(Signed) ANN R. DERMOTT. [s.]

Witness: W. H. CLAGETT.

Interest paid to 28th July, 1861.

(Copy.)

$125.]

WASHINGTON CITY, *January* 28, 1854.

On or before the 28th day of January, eighteen hundred and fifty-eight, I promise to pay to Mary E. Wilmer, or order, the sum of one hundred and twenty-five dollars for value received, with interest payable half yearly.

(S'g'd) ANN R. DERMOTT. [s.]

Interest paid to 28th July, 1861.

(Copy.)

437 $864 45.]

WASHINGTON, 29*th March*, 1856.

On the 29th day of March, in the year 1858, I promise to pay Mrs. M. E. Wilmer, or order, eight hundred and sixty four $\frac{45}{100}$ dollars, with legal interest from date, for value received.

(Signed) ANN R. DERMOTT.

Interest paid to 29 July, 1861.

(Copy.)

$581 46.]

WASHINGTON, 29 *March*, 1856.

On the 14th day of March, 1862, I promise to pay Mrs. M. E. Wilmer five hundred and eighty-one $\frac{46}{100}$ dollars, with interest from date, for value received.

(S'g'd) ANN R. DERMOTT.

Interest paid to 29 July, 1861.

438 ZEPHANIAH JONES *vs.* H. STRINGFELLOW *et al.* } 502.—Equity docket, 7.

The petition of Maria S. Anderson and others, filed June 22, 1866, having been presented and duly considered, it is by the court this 3d day of July, 1866, that the prayer thereof be refused.

By order of the court.

SAME *vs.* SAME. } 502.—Equity docket, 7.

The petition of James M. Crosson and Helen M. his wife, filed June 8, 1866, having been presented and duly considered by the court, it is ordered this 3d day of July, 1866, that the prayer thereof be and the same is refused.

By order of the court.

439 Supreme court of the District of Columbia.

JONES *vs.* STRINGFELLOW, *et al.* } No. 502.—In chancery.

This cause standing ready for hearing, and the same having been argued by l for complainant, and the counsel for defendant having declined to same, the proceedings were read and considered. It is, therefore, this of ~~February~~, ordered, adjudged, and decreed by the authority of this Ann R. Dermott was at the time of her death indebted to the com- Zephaniah Jones, in the sum of twenty thousand one hundred and thirty- and twenty-three cents, with interest from the fifth day of April, undred and fifty-two, and that there is further due said complainant the sum of four hundred and forty-five dollars and sixty-one cents, being for costs by him expended in the prosecution of his said debt in the lifetime of said Ann R. Dermott and since her death, together with his costs in this suit to be taxed by the clerk.

And it is further ordered, adjudged, and decreed that the real estate,
440 with the improvements and appurtenances, in the bill mentioned as belonging to said Ann R. Dermott at the time of her death, be sold; that A. Thomas Bradley and William Y. Fendall be, and they are hereby, appointed

trustees to make such sale, and that the course and manner of their proceedings shall be as follows:

They shall first file with the clerk of this court their bond to the United States of America in the penalty of one hundred and fifty thousand dollars, and with a surety or sureties to be approved by this court and conditioned for the faithful performance of the trust reposed in them by this decree, or which may be reposed in them by any future order or decree in the premises; they shall then proceed to make sale of the said real estate, with the improvements and appurtenances, having first given at least three weeks' previous notice by advertisement in two or more newspapers published in the city of Washington, in this District, of the time, place, and terms of sale, which terms shall be as follows:

441 one-third the purchase money to be paid in cash, and the residue in two equal instalments, payable in six and twelve months from the day of sale, for which deferred payments, with interest from the day of sale, the purchaser shall give his notes, indorsed to the satisfaction of the said trustees.

And the said trustees shall, as soon as shall be convenient after such sale, return to this court a full and particular account thereof, with an affidavit annexed of the fairness of the same.

And on the ratification of such sale by this court, and the payment of the whole purchase money, the said trustees, by a good and sufficient deed to be executed and acknowledged agreeably to law, shall convey to the purchaser and his heirs the said property free, clear, and discharged of and from all claim of the parties to this cause, and of any person or persons claiming by, from, or under them. And the said trustees shall hold the money arising from such sale and the notes, to be given as aforesaid, subject to the direction of this court, and shall be and are hereby authorized to take the whole amount of said purchase money in cash, if the purchaser shall elect so to pay the same, instead of giving his notes for the deferred payments as aforesaid.

By order of the court.

442 Z. JONES *vs.* STRINGFELLOW *et al.* } 502.—In equity.

The above defendant in open court here prays an appeal from the decree in the above entitled case.

July 5th, 1866.

R. J. BRENT,
For Def't.

(Amendment to decree of sale, July 3, '66. See 2d line of that decree.)

443 Supreme court of the District of Columbia.

Know all men by these presents that we, A. Thomas Bradley, William Y. Fendall, James W. Barker, John Van Reiswick, Zephaniah Jones, and Jos. H. Bradley, of the District of Columbia, are held and firmly bound unto the United States in the full and just sum of one hundred and fifty thousand dollars current money, to be paid to the said United States or its certain attorney, to which payment well and truly to be made and done we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this fifth day of July, in the year eighteen hundred and sixty-six.

Whereas by a decree of the supreme court of the District of Columbia, sitting as a court of chancery, bearing date on the third day of July, A. D. 1866, and passed in a cause in said court, wherein Zephaniah Jones is complainant, and Horace Stringfellow and others are defendants, the above bounded A. Thomas Bradley and William Y. Fendall have been appointed trustees

(Copy.)

437 $864 45.]

WASHINGTON, 29*th March*, 1856.

On the 29th day of March, in the year 1858, I promise to pay Mrs. M. E. Wilmer, or order, eight hundred and sixty four $\frac{45}{100}$ dollars, with legal interest from date, for value received.

(Signed) ANN R. DERMOTT.

Interest paid to 29 July, 1861.

(Copy.)

$581 46.]

WASHINGTON, 29 *March*, 1856.

On the 14th day of March, 1862, I promise to pay Mrs. M. E. Wilmer five hundred and eighty-one $\frac{46}{100}$ dollars, with interest from date, for value received.

(S'g'd) ANN R. DERMOTT.

Interest paid to 29 July, 1861.

438 ZEPHANIAH JONES *vs.* H. STRINGFELLOW *et al.* } 502.—Equity docket, 7.

The petition of Maria S. Anderson and others, filed June 22, 1866, having been presented and duly considered, it is by the court this 3d day of July, 1866, that the prayer thereof be refused.

By order of the court.

SAME *vs.* SAME. } 502.—Equity docket, 7.

The petition of James M. Crosson and Helen M. his wife, filed June 8, 1866, having been presented and duly considered by the court, it is ordered this 3d day of July, 1866, that the prayer thereof be and the same is refused.

By order of the court.

439 Supreme court of the District of Columbia.

JONES *vs.* STRINGFELLOW, *et al.* } No. 502.—In chancery.

This cause standing ready for hearing, and the same having been argued by the counsel for complainant, and the counsel for defendant having declined to argue the same, the proceedings were read and considered. It is, therefore, this third day of ~~February~~ July, ordered, adjudged, and decreed by the authority of this court that Ann R. Dermott was at the time of her death indebted to the complainant, Zephaniah Jones, in the sum of twenty thousand one hundred and thirty-six dollars and twenty-three cents, with interest from the fifth day of April, eighteen hundred and fifty-two, and that there is further due said complainant the sum of four hundred and forty-five dollars and sixty-one cents, being for costs by him expended in the prosecution of his said debt in the lifetime of said Ann R. Dermott and since her death, together with his costs in this suit to be taxed by the clerk.

And it is further ordered, adjudged, and decreed that the real estate,
440 with the improvements and appurtenances, in the bill mentioned as belonging to said Ann R. Dermott at the time of her death, be sold; that A. Thomas Bradley and William Y. Fendall be, and they are hereby, appointed

trustees to make such sale, and that the course and manner of their proceedings shall be as follows:

They shall first file with the clerk of this court their bond to the United States of America in the penalty of one hundred and fifty thousand dollars, and with a surety or sureties to be approved by this court and conditioned for the faithful performance of the trust reposed in them by this decree, or which may be reposed in them by any future order or decree in the premises; they shall then proceed to make sale of the said real estate, with the improvements and appurtenances, having first given at least three weeks' previous notice by advertisement in two or more newspapers published in the city of Washington, in this District, of the time, place, and terms of sale, which terms shall be as follows:

441 one-third the purchase money to be paid in cash, and the residue in two equal instalments, payable in six and twelve months from the day of sale, for which deferred payments, with interest from the day of sale, the purchaser shall give his notes, indorsed to the satisfaction of the said trustees.

And the said trustees shall, as soon as shall be convenient after such sale, return to this court a full and particular account thereof, with an affidavit annexed of the fairness of the same.

And on the ratification of such sale by this court, and the payment of the whole purchase money, the said trustees, by a good and sufficient deed to be executed and acknowledged agreeably to law, shall convey to the purchaser and his heirs the said property free, clear, and discharged of and from all claim of the parties to this cause, and of any person or persons claiming by, from, or under them. And the said trustees shall hold the money arising from such sale and the notes, to be given as aforesaid, subject to the direction of this court, and shall be and are hereby authorized to take the whole amount of said purchase money in cash, if the purchaser shall elect so to pay the same, instead of giving his notes for the deferred payments as aforesaid.

By order of the court.

442 Z. JONES *vs.* STRINGFELLOW *et al.* } 502.—In equity.

The above defendant in open court here prays an appeal from the decree in the above entitled case.

July 5th, 1866.

R. J. BRENT,
For Def't.

(Amendment to decree of sale, July 3, '66. See 2d line of that decree.)

443 Supreme court of the District of Columbia.

Know all men by these presents that we, A. Thomas Bradley, William Y. Fendall, James W. Barker, John Van Reiswick, Zephaniah Jones, and Jos. H. Bradley, of the District of Columbia, are held and firmly bound unto the United States in the full and just sum of one hundred and fifty thousand dollars current money, to be paid to the said United States or its certain attorney, to which payment well and truly to be made and done we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this fifth day of July, in the year eighteen hundred and sixty-six.

Whereas by a decree of the supreme court of the District of Columbia, sitting as a court of chancery, bearing date on the third day of July, A. D. 1866, and passed in a cause in said court, wherein Zephaniah Jones is complainant, and Horace Stringfellow and others are defendants, the above bounded A. Thomas Bradley and William Y. Fendall have been appointed trustees

444 to make sale of certain real estate in the proceedings in said cause mentioned:

Now the condition of the above obligation is such, that if the above bounden A. Thomas Bradley and William Y. Fendall do and shall well and faithfully perform the trust reposed in them by said decree, or that may be reposed in them by any future decree or order in the premises, then the above obligation to be void, otherwise to remain in full force and virtue in law.

A. THOS. BRADLEY. [SEAL.]
WILL. Y. FENDALL. [SEAL.]
J. W. BARKER. [SEAL.]
JOHN VAN RESWICK. [SEAL.]
ZEPHANIAH JONES. [SEAL.]
JOS. H. BRADLEY. [SEAL.]

Signed, sealed, and delivered in the presence of—the words and letters "or order in the premises," on 7th line, 2d page, having been first interlined—

BENLY LOVEJOY, as to A. T. B., and W. Y. F.
WILLIAM MORGAN, witness for J. W. Barker.
R. J. MEIGS, witness as to John Van Reiswick.

The foregoing bond is hereby affirmed this fifth day of July, A. D. 1866.

D. K. CARTTER,
Ch'f Justice.

445 JONES *vs.* STRINGFELLOW *et al.* } In equity.

Ordered at chambers this 23d day of July, 1866, on motion of defendants' solicitor, that defendants give security to complainant in the penalty of four hundred dollars on said defendants' appeal to the court in general term from the final decree passed in this cause at the late special term, to act as a supersedure of execution when given.

ANDREW WYLIE.

Know all men by these presents, that we, Horace Stringfellow, E. R. Lippett, Joseph Packard, William Pendleton, Clement Butler, Smith Pyne, J. W. French, Henry H. Beam, Samuel Ridout, John A. Smith, David Saunders, John Saunders, Henry May, Charles Stott, Thomas Miller, Catharine F. Thompson, Robert James, Covington Smith, Peter R. Hawley, Elizabeth Hawley and other children of William Hawley, deceased, Genetta Johnson,
446 Sophia M. Cormick, John H. Ingle, Osborn Ingle, William B. Hill and Catharine B. Hill, his wife, Robert S. Chew and Elizabeth R. Chew, his wife, Louisa B. Smith, John Carroll Brent, Catharine Smith, George W. Tubman, Mary E. Wilmer, John R. Neimsee, J. C. Neilson, John Garlington, Richard Simpson, Hiram H. J. King, Lafried Lensbery, Richard W. Carter, S. M. Meyenbery, Maria Anderson, Dade Hooe, Mary Hooe, Lucy Daniel, and Llewellyn Washington, are held and firmly bound unto Zephaniah Jones in the full and just sum of four hundred dollars, to the payment whereof well and truly to be made to the said Zephaniah Jones, his certain attorney or assigns, we bind ourselves, our heirs, administrators, and assigns, jointly and severally, firmly by these presents. Witness our hands and seals this 23 July, 1866.

Whereas the above-named defendants other than said Llewellyn Washington have prayed an appeal from the decree of the supreme court of the District of Columbia, sitting in special term, passed in the case of Zephaniah Jones *vs.* Horace Stringfellow and others, number 502, in equity, to the said court
447 sitting in general term: Now, the condition of the above obligation is such, that if the above-named defendants so appealing shall well and truly prosecute with effect their said appeal, and pay and satisfy all costs and

damages which the said Zephaniah Jones may sustain or incur by reason of such appeal, in case the decree aforesaid shall be affirmed, then this obligation to be void, and otherwise to remain in full force and virtue.

JNO. H. INGLE. [SEAL.]
L. WASHINGTON. [SEAL.]

Witnessed by—the words "Llewellyn Washington," in 2d line of 2d page, (of original,) and "other than said Llewellyn Washington," in 15th line of same page, being first interlined.

R. J. BRENT.

I consider the above bond ample security for the penalty of four hundred dollars. July 23, 1866.

G. W. PHILLIPS,
Dep. Mar.

Approved: ANDREW WYLIE.

448 Supreme court of the District of Columbia.

JONES *vs.* STRINGFELLOW. } 502.—Ex. doc.

It is ordered that the receiver heretofore appointed in this cause pay to Green & Williams sixty-one $\frac{28}{100}$ dollars, the amount of their bill for advertising sale of the Avenue House under the direction of the trustees.

By order of the court.

October 6th, 1866.

Z. JONES *vs.* STRINGFELLOW *et al.* } No. —. — In equity.

In open court this 13th day of November, 1866, personally appears Robert J. Brent and made oath, on the Holy Evangely of Almighty God, that he was the counsel of the answering defendants in the above cause, and his reasons for declining to argue the same were that after having argued and contested
449 the complainant's claim at every point up to the appointment of a receiver, he was convinced, from the language of Justice Wylie in deciding the appointment of a receiver, that all argument in behalf of the defendants on the merits would be vain and useless. This language consisted of declarations by the judge of his convictions of the justice of Jones's claim; that Jones had executed his contract with Miss Dermott, and been kept out of his claims by a long and technical litigation, and the decisions of the Supreme Court against him were on technical grounds, &c., &c. This deponent felt that his own self-respect forbade further argument of said cause, and in this course he was sanctioned by the opinion of J. Farrow, the attorney-in-fact of the heirs.

R. J. BRENT.

Subscribed and sworn to before me this 13th of Nov., 1866.

R. J. MEIGS, *Clerk.*

450 JONES *vs.* STRINGFELLOW *et al.* } In equity.—No. 502.

The petition of R. J. Brent respectfully prays leave, in justice to himself, to file the accompanying affidavit as explanatory of his reasons why he declined to argue said cause at the final hearing; and in making this application

he states that he only does so because the point is made in the complainant's brief, and he wishes to show as a personal matter his reasons.

R. J. BRENT.

Nov. 13th, 1866.

Ordered that leave be not granted.
By order of the court.

451 In the supreme court of the District of Columbia, chancery.

JONES
vs. } 502.
STRINGFELLOW *et al.*

The appeal prayed on the 5th day of ~~Feb'y~~ July, 1866, from the decree made in the above entitled cause having been argued by counsel and the proceedings in said cause considered, it is therefore, this 24th day of November, 1866, ordered, adjudged and decreed that the said decree be, and the same is hereby affirmed with costs, to be taxed by the clerk, from which decree the defendants pray an appeal to the Supreme Court of the United States, which is allowed.

452 Know all men by these presents, that we, John H. Ingle and Robert J. Brent, are held and firmly bound unto Zephaniah Jones in the full sum of four hundred dollars, to the payment whereof we bind ourselves, our heirs, executors, and administrators, jointly and severally. Dated this 19th December, 1866.

Whereas the above-bound John H. Ingle and his co-defendants in a certain cause in equity lately pending in the supreme court of the District of Columbia, wherein Zephaniah Jones was complainant, and the said Ingle and others were defendants, have prayed an appeal from a certain decree passed in said cause to the Supreme Court of the United States: Now, the condition of the above obligation is such that if the said defendants shall well and truly prosecute their said appeal, and pay all costs which may be adjudged against them, then the above obligation to be void, otherwise to remain in full force and virtue.

JOHN H. INGLE. [SEAL]
ROBERT J. BRENT. [SEAL]

Test: J. HALL COLGATE.

I consider this bond for four hundred ample security.

G. W. PHILLIPS.

Dec. 20, '66.

The foregoing bond is hereby approved this 20th day of Dec., A. D. 1866.

D. K. CARTTER, *Ch'f Justice.*

ADDITION TO RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 75.

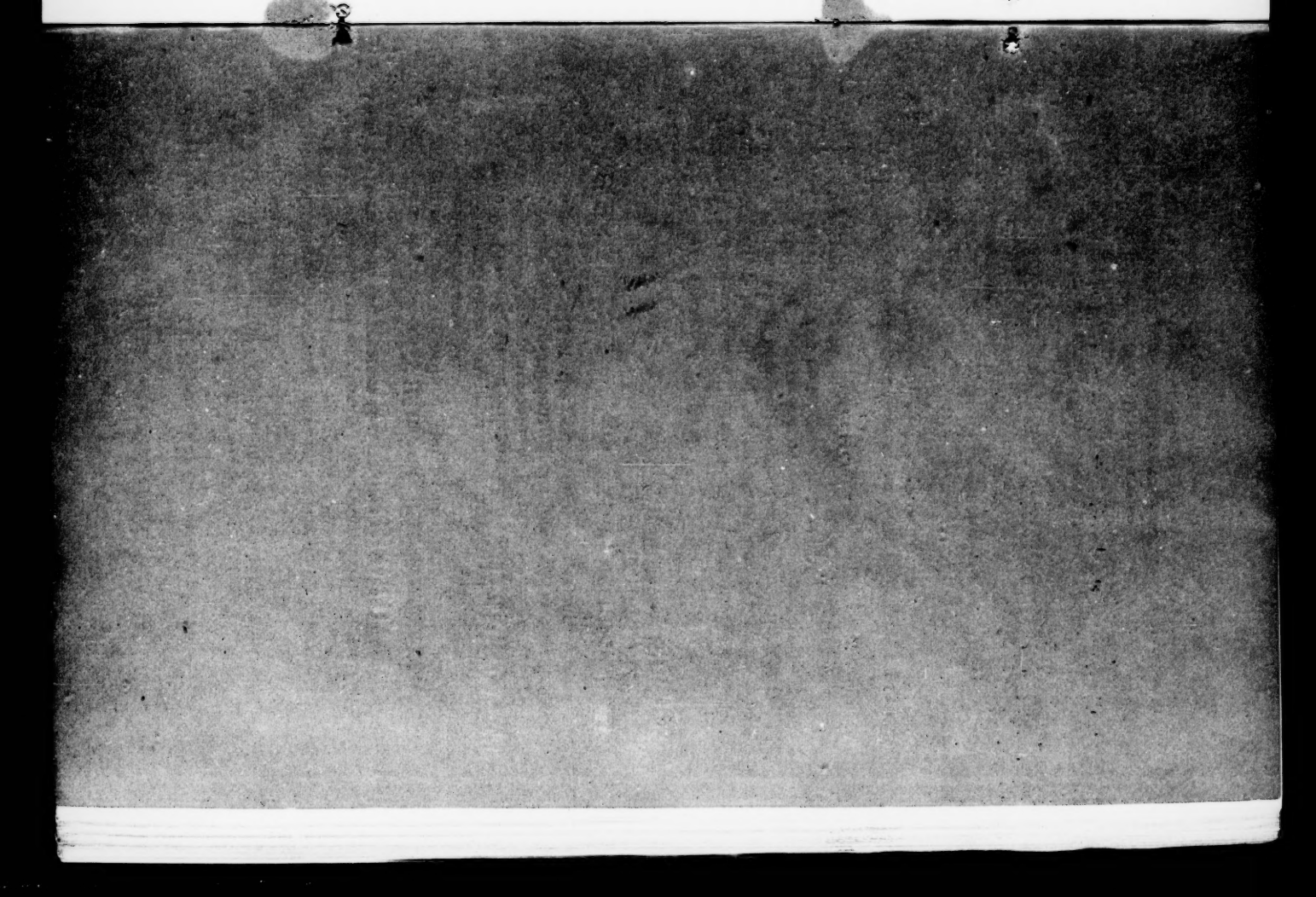
[redacted] ADMINISTRATOR DE BONIS NON OF ANN [redacted] DECEASED, AND HORACE STRINGFELLOW [redacted]

vs.

ZEPHENIAH JONES.

[redacted] SUPREME COURT OF THE DISTRICT OF COLUMBIA.

[redacted] JANUARY 16, 1860.



Answer of Dade Hooe and others.—Filed Oct. 9, 1865.

To the Supreme Court of the District of Columbia, in chancery:

The joint and several answers of Dade Hooe, Mary D. Hooe and Lucy J. Daniel to the bill of complaint of Zephaniah Jones, against them and others, in chancery exhibited.

These defendants, answering, admit that they are heirs-at-law of Anne R. Dermott, deceased.

They are advised, and so charge, that the devise in the will of Anne R. Dermott to the trustees therein named for the charity mentioned, is illegal and void.

They admit that said Anne R. Dermott died largely indebted to the complainant, and are willing and hereby consent to the payment of said indebtedness.

They also consent to the payment of all liens upon the real estate of said Anne R. Dermott, and of all lawful legacies in the said will contained, including the annuity therein mentioned; and admitting the personal estate to be insufficient for the purposes aforesaid, they hereby consent to the sale of the real estate, as prayed; and as in duty, et cet.

DADE HOOE.
L. J. DANIEL.
MARY D. HOOE.

STATE OF VIRGINIA, *County of Stafford*:

Before me, the subscriber, a justice of the peace in and for the county of Stafford, personally appeared Dade Hooe, Mary D. Hooe and Lucy J. Daniel, whose names are signed to the foregoing answer, and made oath that the matters therein contained are true, to the best of their knowledge and belief.

Witness my hand and seal this 8th day of September, 1865.

[SEAL.] N. W. FORD, *J. P.*

1 *Petition of Dade Hooe and others for leave to withdraw answer of Oct. 9, '65.—Filed May 23, 1866.*

ZEPHANIAH JONES
vs.
HORACE STRINGFELLOW, *et al.* } No. 502. In equity.

Petition of Dade Hooe and others for leave to withdraw answer.

To the Honorable the Supreme Court of the District of Columbia:

The petition of Dade Hove and his two sisters, Mrs. Lucy J. Daniel, a widow, and Mrs. Mary D. Hooe, also a widow, respectfully sheweth: That they are some of the next of kin and heirs-at-law of Miss Anne R. Dermott, deceased, late of the city of Washington, D. C., and that your petitioners are and have, from before the begin-

ning of the recent unhappy war, been citizens and residents of the State of Virginia. Just before the beginning of the war they heard that Miss Dermott had departed this life, and at the same time heard that she had willed her estate to a friend or friends of hers in Washington city. All intercourse between said city and the section
2 where your petitioners lived, having been suspended by the war, they never knew nor had they ever heard that Miss Dermott's estate was not legally and effectually disposed of by her, as they had at first heard; nor had they ever heard or had any reason to believe that they were entitled as heirs-at-law, or otherwise, to any right or interest in said estate till the early part of September, 1865, and then only in the manner and to the extent as hereinafter set forth.

At the period just mentioned there came to your petitioners, all of whom were then at the home of petitioner, Dade Hooe, in Stafford co., Virginia, one Mr. R. S. Morgan, representing himself as from Washington, D. C., and that he had come to confer with them as to their rights and interests in the estate of Miss Dermott, deceased. Said Morgan proceeded to inform petitioners of the condition of the estate, and exhibited to them a paper alleged to be a copy of the last will and testament of Miss Dermott, by which instrument the whole of said estate, after payment of debts, excepting a few specific legacies of small amounts, was devised to trustees for certain
3 charitable uses. Mr. Morgan stated that, notwithstanding the bulk of the estate had, as shown by the will, been devised to charity, there was yet a mode of defeating that devise, and of securing that portion of the estate to the next of kin; that the estate was still unsettled, and, if proper steps were taken, the next of kin could defeat the trust and secure for themselves that portion of the estate; that the property of the estate was worth one hundred and twenty thousand dollars or more; that there were undisputed debts on the estate to the amount of eighteen or twenty thousand dollars; that, in addition, there was a debt for thirty-seven thousand dollars due to one Zephaniah Jones for work and materials done and furnished said estate, which was still open, payment of which had been refused by the administrator of the estate, for reasons and motives of his own not founded in justice, but which debt was nevertheless justly owing from said estate to said Jones, and which debt the estate, beyond doubt, would be ultimately obliged to pay; that no litigation against the claim of Jones would be of any avail, but only run the estate to unnecessary costs and expenses; that Jones had been obliged, by the non-payment of this claim, to sell a portion of his own property to enable him to pay for the materials he had purchased and put into the build-
4 ing he had built for Miss Dermott. Said Morgan went on to say that if the next of kin would admit Jones' claim they would not only do justice to an unmistakably meritorious creditor, but would save the estate much unnecessary expense. Said Morgan represented further, that in agreeing to the payment of Jones' claim, the heirs-at-law, while awarding but justice to a meritorious creditor,

and therefore saving the estate from expense, would be advancing their own interests in another way, as follows: That if, by the accidents of litigation or the quibbles or technicalities of law, Jones' claim should be defeated by the administrator, the estate could pay the other debts, aggregating not more than eighteen or twenty thousand dollars and the few thousand dollars of specific legacies, and still have enough left to admit the execution of the trust; but that, if to the admitted debts and specific legacies there should be added Jones' debt of thirty-seven thousand dollars more, the estate would be so diminished as to make it impracticable to execute the trust, and the residue would go to the next of kin instead of the trustees for the charity.

Said Morgan further stated to your petitioners, that the estate aforesaid consisted of real estate in the city of Washington, which property was in the hands of the administrator of the estate, who was not making the property yield to the estate anything like the rents and profits which it was believed he could and ought to make said property yield; that the administrator ought to have received in rents, since Miss Dermott's death, not less than forty thousand dollars; that search had been instituted, but no discovery had been made of any returns or accountings for his actings and doings by said administrator in the premises; that though the property was in the possession of the administrator, he was not under bonds for the faithful management thereof, and therefore not properly bound and responsible to the estate for a faithful administration.

That the administrator had been wasting the estate in paying counsel fees for unnecessary, unjust and improper litigation; that the estate was being greatly injured and wasted by the administrator; that it was important for the preservation of the estate that some steps be promptly taken to close it up, by bringing the administrator to a settlement and removing from him the power of wasting it; that it was important for the next of kin, if they wished to preserve their rights and interests and save the estate from unnecessary expense in litigation, to agree to the payment of said Jones' claim, and have his help in closing up the estate.

Petitioners aver that said Morgan never told them, or either of them, that the trust in Miss Dermott's will was null and void in the estimation of the legal profession generally, as your petitioners have since been advised and believe is the case; nor did said Morgan inform petitioners, or either of them, that the claim of said Zephaniah Jones was denied as grossly unjust by Miss Dermott in her lifetime, in her sworn answer filed in response to a bill of complaint of this very Zephaniah Jones brought for this identical claim; nor that said claim, though twice affirmed by verdicts of juries had in both instances, been condemned by the United States Supreme Court; nor did said Morgan inform your petitioners, or either of them, that the fees paid by the administrator in litigation represented as unjust and improper, were fees paid by the administrator for defending the estate and the heirs against this identical claim of Jones, so eulogized by said Morgan, but so denied and scouted by Miss Dermott,

7 and so condemned on two different occasions by the Supreme Court of the United States.

Your petitioners aver that they reposed implicit confidence in the statements of said Morgan, taking it for granted that he would lay before them all the facts bearing on the subject upon which he solicited their action, and upon which they understood him as coming to them in the character and with the professions of a friendly advisor; more especially did your petitioners extend to said Morgan their unreserved confidence, from the fact that he came to them with letters of introduction and recommendation from friends of petitioners for whom they had the highest regard. Under these circumstances your petitioners gave credence to the statements of said Morgan, and signed a preferred answer, containing amongst other things the admission that Miss "Annie R. Dermott died largely indebted to" said Zephaniah Jones, and that your petitioners "were willing and hereby consent to the payment of said indebtedness."

But your petitioners do aver and charge that said Morgan did not communicate to your petitioners material facts concerning the subject about which he solicited their action; that they have reasons for believing, and do believe and do aver, that said Morgan so acted

8 and represented by the instigation and under the instruction of said Zephaniah Jones or his agents.

Your petitioners also aver that they were not informed by said Morgan that he was acting in behalf of and as the agent of said Zephaniah Jones in approaching and communicating with your petitioners and that relying on the verity of said representations and statements, and believing that they embodied all the material facts connected with the rights of your petitioners in the premises, they did sign the answer presented to them by said Morgan, which answer they are informed is now on file in the Supreme Court of the District of Columbia; but your petitioners further declare that since the filing of said answer, and recently, they have reason to believe, and do verily believe and charge, that said Morgan was employed by the said Zephaniah Jones or his agents to approach your petitioners and make the representations aforesaid, and that the expenses of said Morgan in travelling to the residence of your petitioners, and also to see others of the heirs of said Miss Dermott in South Carolina, for whose

9 names and residences said Morgan inquired, saying he was going to see them also, and to whom your petitioners have since learned, he did go immediately after coming to your petitioners, were defrayed by said Jones, or his agents acting by his authority; and that all such representations and statements of said Morgan are in law and in fact the representations and statements of said Zephaniah Jones, and that the same have enured wrongfully and injuriously, so far as the rights of your petitioners are involved, to the benefit of said Zephaniah Jones.

Your petitioners further say and charge that said representations and statements were false in material particulars, and especially in the allegation that the administrator, John H. Ingle, had grossly mismanaged and was squandering the estate; and especially also in the

representation that said John H. Ingle, as administrator, by not being under bonds for the faithful management of the real estate, would not be responsible to the heirs-at-law for any waste or neglect thereof; and especially also in the representation that there was a doubt about the nullity of the devise in said will to charitable uses.

And the said representations and statements were also calculated to deceive, and did deceive your petitioners in this, that ma-
10 terial facts well known to said Jones were suppressed and concealed from the knowledge of your petitioners, especially the fact that Miss Dermott had in her lifetime repudiated the claim of said Zephaniah Jones, and that the Supreme Court of the United States had decided on two different occasions against the said claim; said court having ruled in their first decision that said Jones had not kept his contract with said Miss Dermott, and in their second decision that the reasons assigned by said Jones for not keeping his said contract with said Miss Dermott were insufficient. And your petitioners believe and do charge, that the whole scheme and design of said Zephaniah Jones in sending said Morgan to the heirs aforesaid, in Virginia and in South Carolina, was for the express purpose of taking undue and unfair advantage of their ignorance and their confidence in said representations and statements, and especially to obtain by fraud and contrivance the admission of the justice of the claim of said Zephaniah Jones, contrary to equity and good conscience. And your petitioners do verily believe and charge that said answer so
11 filed, as also a bill filed in their behalf against said administrator, were obtained by the fraud and unfair contrivance of the said Zephariah Jones in the premises, and that the same ought to be annulled, vacated and set aside.

Wherefore your petitioners pray that their said answer may be taken off the files of this honorable court, and that they may be allowed to answer the bill of said Zephaniah Jones without prejudice, by reason of their answer aforesaid, and that all necessary amendments and corrections for that purpose may be made.

And your petitioners as in duty bound will ever pray. &c., &c.

DADE HOOE.
LUCY J. DANIEL.
MARY D. HOOE.

STATE OF VIRGINIA, *Spottsylvania County*:

Before the subscriber, a notary public in and for the county and State aforesaid, this 22d day of May, A. D. 1866, personally
12 appeared Dade Hooe, ——, who being first sworn in due form of law upon the Holy Evangelists of Almighty God, makes oath that the signature to the foregoing petition purporting to be his is genuine, and is truly his act and deed; that the facts stated in the foregoing petition, so far as they relate to his own acts, are true, and so far as they relate to the acts of others he believes them to be true, to the best of his knowledge and belief.

Subscribed and sworn to before me this 22d day of May, A. D. 1861.

[NOTARY PUBLIC SEAL.] HENRY T. BOTTS, *Notary Public.*

STATE OF VIRGINIA, *Prince William County*:

Before the subscriber, a justice of the peace in and for the county and State aforesaid, 21st day of May, A. D. 1866, personally appeared Mrs. Lucy J. Daniel and Mrs. Mary D. Hooe, who being both first sworn in due form of law upon the Holy Evangelists of Almighty God, make oath that the signatures to the foregoing petition
13 purporting to be theirs are each genuine, and severally their own act and deed; that the facts stated in the foregoing petition, so far as they relate to the acts of themselves, are true, and that so far as they relate to the acts of others they believe them to be true, to the best of their knowledge and belief.

LUCY J. DANIEL.
MARY D. HOOE.

Subscribed and sworn to before me this 21 day of May, A. D. 1866.
L. B. BUTLER, *J. P.*

STATE OF VIRGINIA, *Prince William County, to wit*:

I, Mordecai B. Sinclair, clerk of court of the county aforesaid, in the State of Virginia, do hereby certify that Lewis B. Butler, whose name is subscribed to the foregoing certificate, is a justice of the peace in and for the county aforesaid; that his signature is genuine, and to all his official acts as such full faith and credit are due,
14 and ought to be given thereto as well in courts of justice as thereout.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said county, this 21st day of May, A. D. 1866.

[SEAL.] M. B. SINCLAIR, *Clerk.*

Ordered upon the within petition that the matter thereof stand for hearing on the 11th day of June, 1867, provided a copy of this petition and order be served on the complainant, Z. Jones, on or before the 9th day of June, 1866.

By order of the court.

Service of copy and order acknowledged 8th June, '66.
BRADLEY & DAVIDGE.

(Recorded eq. term 2, p. 153.)

Agreement of counsel to amend't of record to Supr. Ct. of U. S.— Filed Mar. 30, '68.

INGLE, ADM. &C. OF DERMOTT *et al.*, *vs.* Z. JONES. } 502. In equity.

As the printed record of the above case now in the Supreme Court U. S. omits several papers and documentary matters, it is agreed that Mr. Meigs shall certify all the omitted documents in a

supplemental record, and the same when printed in the Supreme Court shall be taken as part of the original record.

March 30, 1868.

R. J. BRENT, *for Appellants.*

We agree if the case is not called at the pr'ent term.

BRADLEY & DAVIDGE,
For Def't in Error.

Affidavit of James Farrow, June 22, '66.

JONES
vs.
STRINGFELLOW AND OTHERS. } No. . Equity.

Personally came James Farrow, who being duly sworn says: That he is, by written powers of attorney filed in this cause, the attorney-in-fact of Maria S. Anderson, Susan W. Garlington, Eliza L. Ballew, Jane S. Farrow, Benjamin S. James, heirs-at-law of Miss Dermott, and resident in Laurens district in the State of South Carolina, in the matter of their interests in the estate of Miss Dermott, deceased; that he was invested with this authority some time in Feb'y or March last; that before then he had no authority to represent said heirs, nor had he any reason to believe, nor does he believe, that before the period mentioned said heirs relied upon his assistance in the premises, further than to make some general inquiries for them as a relative and friend. In October, 1865, deponent had occasion to visit Washington city on private business of much importance to him individually; when the heirs aforesaid learned he was coming to Washington some of them requested him to get what information he could of their interests in the Dermott estate, and especially to ascertain how long before the cause would probably be tried, and when they would have to be represented by counsel. On learning that on account of non-resident defendants who had not answered, the cause would not be ready for trial before March, 1866, or later, deponent being pressed for time, did not make any further special inquiry.

In the month of December deponent was again for a short period in the city of Washington, but as before not in any manner or degree as council or agent of said heirs, though while here, he did endeavor, as will be hereafter explained, to find out something about said business, his mother being one of the several heirs-at-law of Miss Dermott.

Deponent further states that though the heirs aforesaid had, in September last, answered the bill of complaint filed by Zephaniah Jones against Horace Stringfellow and others, and though said answer appears on file as filed by one Geo. H. Morgan, as solicitor for said heirs, yet said heirs, as they declared to deponent, signed and delivered said answer to one R. S. Morgan, not to be committed to the care of Geo. H. Morgan or any other solicitor, but to be by said R. S. Morgan "conveyed to this court," (see affidavit of Geo. H.

Morgan,) said heirs having intended, by said answer, to appear in this hon. court, at that time only in propria persona. The reason of this delay in the selection of counsel, as explained to deponent by some of said heirs, was that in consequence of the suspension of intercourse between the people of the two sections north and south, they could not get satisfactory information as to those members of the legal profession who were then at the bar in Washington. And in proof of the wisdom of this caution deponent refers to the fact that the heirs aforesaid received a letter from their relative and co-heir Dade Hooe urging them to employ the said Geo. H. Morgan for the reason that he, the said Morgan, was "probably the ablest lawyer in Washington," which letter turned out to have been written at the special request of said R. S. Morgan, he having in fact written out the whole letter, and procured the copying thereof by Dade Hooe, and then enclosed the same in Hooe's handwriting accompanied by a note of his own, representing the enclosed, as a bona fide letter from said Dade Hooe, which several papers including the original draft aforesaid, are ready to be produced and verified, whenever opportunity shall be allowed, which original draft aforesaid is as follows, to wit:

STAFFORD COUNTY, VA., 1 *Oct.*, 1865.

John Garlington, esq.

DEAR SIR: I have just received a letter from my lawyer, Mr. R. S. Morgan, which informs me he has been to to see you upon the business of setting aside the will of our cousin, the late Anne R. Dermott.

I supposed that all the heirs-at-law of cousin Anne would join in a suit to recover her property. I set the example being nearest to the place where the property is situated, and engaged probably the ablest counsel in Washington to represent me in the matter. Mr. Morgan informed me that you had not made up your minds either to enter into the suit or to engage him and his partners as your lawyers.

Of course I am anxious to prosecute this matter, but at the time I am unwilling to pay the expenses of a suit, and others reap the same benefits as I would.

I have answered Mr. Jones' bill of complaint, and also given Mr. Geo. H. Morgan a paper for one third of the estate contingent upon success. I enclose you a copy of the agreement.

I can probably sell out my interest in the matter for at least as much as I would get from the estate, if the will is made void, and I think it would be to my interest to do so.

Before taking any steps in the matter I would like to hear from you, and I advise you to act immediately and let the suit go on.

You can either send your letter to me or to Mr. Morgan. He will get it more certainly than I, as we have no P. O. here. Mr. M. will forward to me any communication.

If you engage the Morgans, send them a power of attorney. I have given him a like power. With much love from my sisters and myself to all our relations. I am your cousin,

DADE HOOE.

And which original draft is written upon above the address in red ink as follows:

"Make a copy of this letter, and send me the copy in your handwriting immediately.

"R. S. M."

When deponent was in Washington in Dec., 1865, (the time referred to in the affidavit of Geo. H. Morgan, as Dec. '65 or Jan'y, 66,) among other steps he took to find out something about the business of his friends and relatives; he went to the office of the said Geo. H. Morgan, who, he had heard, was the solicitor for Hooe and sisters, and from whom he received some statements relative to the case, with great commendation of the merit of Jones' claim and great disparagement to the testimony by which it was opposed, and quite free criticism as to the motives of the administrator in opposing said claim. While deponent was impressed by the singular zeal of said Geo. H. Morgan, in behalf of said Jones, deponent did not at that time know enough of the testimony relative thereto, to justify him in the positive conclusion that said Geo. H. Morgan was in error.

Being, however, subsequently by the heirs aforesaid as above explained, deponent came to Washington in the latter part of April last, and soon thereafter again called upon Geo. H. Morgan for information upon the rights and interests of the heirs of Miss Dermott, not knowing but that he might employ said Geo. H. Morgan as solicitor for his principals, as said Geo. H. Morgan was already solicitor for a portion of the heirs, and as it might be advantageous to have the interests of the heirs in the hands of the same counsel. To his surprise, said Geo. H. Morgan appeared to deponent while as zealous as before for Jones, inexcusably ignorant of the record of and the facts connected with the antecedent litigation between Jones and the Dermott estate, especially in view of the fact that he had solicited employment of said Hooe and sisters, and that he had been in their employment then seven months or more, and that it was then expected that in a few weeks, if not sooner, the cause would come to trial.

This significance of ignorance on the part of said Geo. H. Morgan was increased when deponent remembered that said Geo. H. Morgan as solicitor for and sisters, had filed a bill in the honorable court, in their names, praying to enjoin John H. Ingle from any further receipt of rents, and for the appointment of a receiver. Deponent was aware that said John H. Ingle had applied a small portion of the rents received by him to the defence of the estate of Miss Dermott from a claim of Zephaniah Jones, for over forty thousand dollars, which claim by said litigation had been defeated on two different occasions in the Supreme Court of the United States. Deponent was also aware, and presumed such fact to have been known to said Geo. H. Morgan, that however unjust and illegal Jones' claim might be, the chance of having it judicially examined would be very greatly lessened by ousting said Ingle and appointing a receiver, in that he required supplies for fees, costs and expenses for continuing the opposition to Jones' claim would be cut off, and Jones' claim

be unchallenged, unless the heirs, impoverished by the war, should advance funds, which was quite improbable if not impossible in the present financial embarrassment and prostration of the south, where the heirs all reside. Deponent made inquiry about said John H. Ingle, and became satisfied there was no danger as to security for rents that had been, or might be received by said Ingle. Deponent from inquiries became satisfied further, that while some might think said Ingle had not charged as much rent as he ought, that yet said Ingle had reasons for so acting which would reduce the cause of complaint against him to the merest trifle. Deponent upon inquiries was satisfied further, that said John H. Ingle had sufficient estate of his own out of which to sataisfy the heirs for any culpable neglect in the management of the property aforesaid. These convictions, together with the ignorance aforesaid on the part of Geo. H. Morgan, constrained deponent doubt whether he comprehended the interests of his clients, or if he comprehended them, whether he was pursuing the policy said interests required. The effort of said Geo. H. Morgan to enjoin Ingle and appoint a receiver, seemed to deponent as "penny wise and pound foolish," as in endeavoring to secure a few hundred dollars additional rent, he was virtually handing over the heirs-at-law, a portion of whom were his own clients, to be despoiled by Jones of over forty thousand dollars!

Deponent freely confesses not only the right but the duty of counsel, where a case is sustained by such overwhelming testimony as leaves no doubt of its merit, to so act as will do justice and save his clients unnecessary costs. But when counsel undertakes in advance to decide against the interests of clients, it is to be expected there will be found no serious conflict of testimony; especially so where clients are non-residents; especially where there are intimate social relations between counsel and opposing claimant or their families; especially where counsel has received the trust of such clients by direct solicitation; especially where the claim in question is resisted by the administrator of the estate, he having no other than a fiduciary relation to the estate, and being a stranger to all the heirs; especially when such opposition has been, on two different occasions, sustained by the decisions of the Supreme Court of the United States.

In the meanwhile the testimony in support of Jones's claim, which had been substantially all taken, was courteously placed by one of Jones' counsel (Mr. Davidge) at deponent's use for his examination.

But deponent did not believe his duty to his principals would be discharged by yielding their interests either to the opinion of said Geo. H. Morgan, though he was "solicitor" for portion of the heirs, or to the imposing array of testimony in support of Jones' claim, so confidently relied on by his counsel aforesaid, or to both combined. In his endeavor to get all the information he could with a view to shaping his course as agent of his principals, consistentle with their interests, subject to manifest justice, he had recourse to the administrator and his counsel, and from the letter received, with other information, the briefs of former trials between Jones and the Dermott estate, including copies notes ot the evidence upon those previous trials.

After examining the evidence as to Jones' claim, which involved the manner in which Jones had constructed certain buildings in the city of Washington, deponent found that while Jones had some strong testimony as to the proper character of his work, there was much of very strong testimony to the contrary. One witness of exalted reputation as an architect and as a gentleman of character, John R. Niernsee, after specifying sundry particulars in which Jones had failed to do his duty, summed up his negligence thus: "The appearance of the building to a casual passer by was that of a building threatening to fall down. I do not think the building was habitable with safety when I examined it preparatory to my commencing operations as an architect; nor do I believe that a tenant could have been found to make use of the warehouse for the purposes for which it was built, even if he had it rent free."

I believe there would have been great danger to property and even life in the occupation of the building. Another witness, Chris'r Andrews, on the same occasion testified in reference to the sinking and inclination of the walls, as follows: They were very plain; they could be seen from the opposite side of the street, and after I had seen the condition of the foundation I was unwilling to pass on that side of the street which the building fronted from the apprehension that the walls would fall down, and I considered it dangerous to do so; and when I had occasion to pass up or down Seventh (7th) street I kept on the other side of the street to avoid it."

A number of other witnesses, of high respectability, testified to about the same in substance, and it was in proof of that the city police authorities took preparatory steps against it as a nuisance, from which they desisted on learning that Miss McDermott herself was about to take down the dangerous walls.

Meanwhile deponent remembered that his principal had represented to him as representations derived from said R. S. Morgan; that the policy of the administration was and would be one of extreme antagonism to the interest of the heirs, insisting on the validity of a certain devise to charity in Miss Dermott's will, and that it would require considerable effort to secure the interests of the heirs at the hands of the administrator. Deponent remembered, also, similar representations made to him verbally by said Geo. H. Morgan,, and also in a letter, wherein said Geo. H. Morgan, soliciting still further employment by the heirs in South Carolina, and urging upon them terms of contract, wrote as follows : "This will secure to you and your co-heirs two-thirds of the sum which must (without the most skillful and vigilent exertions on part of your counsel,) become the prey of those sharks which have been devouring it for the last four years;" which letter, in the handwriting of said Geo. H. Morgan, is ready to be produced for verification whenever an opportunity shall be allowed. And when, remembering these things, he met the administrator, and was told by him that he had been advised, and believed himself to be a trustee for the heirs, that the devise to charity was admitted to be void, that he had opposed Jones' claim only from a sense of duty to the heirs, as the persons ultimately enti-

tled to the estate after the payment of debts and legacies, that if the heirs desired the claim of Zephaniah Jones to have no further opposition, he would act accordingly; and when these declarations were reiterated by the solicitor for the administrator, Robert J. Brent, esq., deponent was not a little perplexed at the conduct of said Geo. H. Morgan in his great and repeated efforts to get control of the interests of the heirs, and his zeal in support of Jones' claim, his apparent desire and effort to prejudice deponent and his principals against the administration and his counsel, and his singular proceeding to secure the interests of the heirs in the matter of rents by securing the despoiling of the heirs by Zephaniah Jones of over forty thousand dollars. And deponent believed then, and believes now, that whether said Geo. W. Morgan so intended or not, he could not have fallen upon a better policy, better calculated than was that he did adopt, for the advancing of Zephaniah Jones' interest at the expense of the heirs-at-law, his own client included. And as evidence of the extraordinary effort of said Geo. A. Morgan to get control of the interests of South Carolina heirs, deponent states that besides sending his brother to South Carolina in person, Sept. 1865, the said Geo. W. Morgan and his said brother, together, have written and caused to be written to the heirs aforesaid and to deponent, supposing he represented them, no less than four different letters renewing and urging terms of contract, and then these solicitations all being declined, still another making a fifth letter, to induce said heirs to join in the aforesaid bill against Ingle for a receiver.

About this time deponent was informed on what he believed and still believes unquestionable authority, that the aforesaid Zephaniah Jones had boasted, that the visit of the aforesaid R. S. Morgan to Virginia and to South Carolina, wherein he obtained the aforesaid answers of the heirs-at-law of Miss Dermott, to his (Jones') bill of complaint against Stringfellow and others, was undertaken at his request and under his instructions; and that the said visit had cost him considerable money, but that it had succeeded in its purposes beyond his anticipations.

Thereupon deponent immediately wrote to Dade Hooe, as follows:

WASHINGTON, D. C., *May* 1, '66.

Mr. Dade Hooe:

DEAR SIR: The heirs of Benjamin James, (a portion of the heirs of the late Miss Dermot,) having engaged me to represent and look after their interests in the estate of said Miss Dermott, besides being agent and attorney for the heirs aforesaid, I am a grandson of the late Benjamin James, whose children ase my mother's uncles and aants, and therefore my near relatives. You will therefore see I am doubly interested in the success of the James' family getting their legal rights, and of the estate of our deceased cousin, Miss Dermott.

For several days I have been examining into the condition of this estate, and the rights of my clients and relatives who stand in relation to said estate, as yourself and your sisters. Their rights and

yours being the same, I feel privileged to address you on the subject of our common interests.

You are aware that one Mr. Jones is suing the estate for a large claim, about forty thousand dollars or more. This claim has been in litigation for about fifteen years.

Mr. Jones sued Miss Dermott in her lifetime, in the court of equity. In her answer in that suit Miss Dermott denied that she owed him anything, but on the contrary, he was indebted to her. The subject of the claim was for building a house. Miss Dermott averred that Jones so far failed to construct the house properly as to make it necessary for her to employ other workmen, at heavy expense, to take certain portions of this work down and reconstruct it, and that the money she had to pay for this reconstruction, together with loss of rents arising out the delay in her building being made fit for use and occupation, caused her a loss of more than the amount claimed by Jones as his balance for work and material furnished her. She proved by respectable witnesses that the work was so defectively done by Jones as to have rendered it impossible ever to have rented the house for anything. One witness testified that he did not believe that she could have gotten any sane man to have occupied it even free of rent, so great was the danger of the walls of the building falling down. The walls leaned so much out of plumb as to cause persons travelling the street by it to go on the other side, so as to avoid the danger of its falling. It was further proved that Mr. Jones' construction of the drainage was so imperfect as to cause water to collect under the building to such amounts as to make the basement utterly unfit for any kind of use, so much so as even to make it necessary to put down bricks to enable persons to walk over it without walking in water.

It is true Mr. Jones had several witnesses to testify that he built the house according to contract made with Miss Dermott, and that he built it in a workman-like manner. But while there is this conflict of testimony as to Jones' conduct, and while it is true Jones has twice gained verdicts against her estate for his claim, it is nevertheless true that the Supreme Court of the United States has set aside both those verdicts as contrary to the law applicable to the facts as proven. This is enough to show that while Jones may have witnesses to prove contrary to what Miss Dermott's witnesses prove, yet in the judgment of the Supreme Court of the United States, the highest legal tribunal in America, Miss Dermott was right and Jones wrong.

Since Miss Dermott's death, the suit for Jones' claim has been defended by the adm'r, Mr. Ingle. You are aware this property was all willed to certain trustees for building an asylum.

But the lawyers here all say that part of the will is void and cannot stand, and that portion of the property will go to Miss Dermott's next of kin, or heirs, to wit, to you and your sisters and the children of Benjamin James, late of South Carolina. The administrator himself acknowledges this, so does the administrator's counsel, so does also even Mr. Jones' lawyer. Here you will perceive that the administrator, in defending the estate from Jones' claim, has been fighting for the heirs. Mr. Jones has recently taken it into his head to

off the vigilance of the opposition made to him by the administrator by getting the heirs, the persons who are entitled to the estate, to come in and acknowledge the justice of his claim and to consent that it shall be paid. Of course, if the persons out of whose pockets the money is to come are willing that Jones' claim shall be paid, this knocks up the heels of the administrator, for the court will say at once that if those who are to foot the bill are willing to do so, it is no concern of the administrator. And this would be true. To accomplish this scheme Mr. Jones hired a man to go to see you and your sisters, and to go to see the S. C. heirs, and get your and their consent to his claim being paid; in other words to get the heirs to take forty thousand dollars out of their pockets and put the same into his. He sent this agent before communication between the sections was restored, and before the heirs knew or had any chance of learning the condition of things here as to the estate or their rights therein. This agent came to S. C. and represented there that the interests of the heirs required they should join forces with Jones and give him his claim in order to have Jones' help in getting the estate out of the hands of the administrator, who this agent represented as squandering the estate. While this representation was being made the truth was the administrator was doing all he could to protect the interests of the heirs by protecting the estate from the unjust demands of Mr. Jones. I have good authority for saying that this man Jones, since the visit of his hired agent down to Virginia and South Carolina, has boasted of his smartness in getting his claim secured by getting the heirs to consent to his being paid.

In the case of the S. C. heirs he did not succeed quite so far, as they were induced to file an answer consenting that all just debts be paid: therefore the South Carolina heirs may yet resist Jones' claim, and it may be defeated as to them. But in the case of yourself and your sisters, you and they have by your and their answer expressly acknowledged that Jones' claim is just, and expressly consenting that it shall be paid. And without some action on the part of yourself and your sisters your and their half of this forty thousand dollars will be irretrievably gone. There is yet a chance, I think, of your setting yourselves right and relieving yourselves of the admissions in your answer. I shall come to Fredericksburg in the course of a week or ten days, giving you due notice of when I will be there, for the purpose of meeting and consulting with you in reference to this subject, provided you can meet me at Fredericksburg. When I ascertain what day I can come to Fredericksburg I will write you two or three days in advance; so you will have time to receive the notice and meet me, provided you desire to do so. I will send that notice in a letter to your address, to care of Mr. Ware, cash'r of the bank. You can make some arrangement with him to secure such letter, whenever it shall reach him, being immediately forwarded by special messenger to you.

I would state further that in my judgment the bill filed recently in the name of yourself and your sisters to take the control of the property out of the hands of the administrator, Mr. Ingle, and put

it into the hands of a "receiver," was the worst step that could have been taken for the interests of you and your sisters and the other heirs, and was just playing directly into the hands of Jones. Representations have been made by Jones and his friends that Ingle, the administrator, was not properly attending to the estate, not making so much by the rents as he should, and misapplying some of the rents he has received. As to the amount of rents he ought to have made out of the property, Jones and his party claim that he should have put up the property to the highest bidder, and in that way many persons would have given much more. I suppose this may be true to a certain degree, and yet I am myself far from admitting that it would have been expedient in the end for the heirs had adopted such a course. Rents during the war ran up very high; transient tenants would sometimes pay enormous rents, but had Ingle taken in these transient persons as tenants for sake of higher rents, and thus turned out old and long-tried tenants, he might have re-enacted the silly part of the man who cut down the tree to get the fruit.

But they say he misused the funds. How? By paying out a portion of the funds as fees to his, Ingle's, lawyer, Mr. Brent. Suppose he has; was not his lawyer our lawyer? Was not Mr. Brent defending our interests? I can see why Jones should not want Mr. Brent paid, and why Jones should want to oust the administrator and get the property and funds into the hands of somebody who would not oppose his (Jones') claim; but why the heirs should want Ingle ousted because he protects the estate from unjust claims, I cannot see. And for the heirs to ask that Ingle be removed from the control of the funds, and that a receiver be appointed, seems to me to be suicidal in the extreme. For you will perceive that if Mr. Ingle be ousted, there is then nobody to fee a lawyer unless the heirs take the money out of their own pockets and advance it. If the estate, after paying debts and specific legacies, belongs to the heirs, as nobody denies, and if the administrator defends the estate by counsel from unjust claims, where is it of any interest to the heirs to stop that defense?

As to Mr. Ingle's general character as to business capacity and integrity, I have inquired of several persons here who know him there, know him for years, and I have received from all a favorable account of him. Among others, I inquired of the Messrs. Hooe, merchants here, whom you know, and I enclose you their opinion of him. I learn too, on good authority, that he is not only a prudent and steady business man, but that he is worth, in his own right, fifty thousand dollars, or more, which would, it seems to me, present quite a sufficient security for any liabilities he may have incurred or is likely hereafter to incur by not exacting quite enough rents or by paying, even erroneously, a few hundred dollars as counsel fees to a lawyer for defending the estate. Hence I can see no good in this move to result to the heirs, but, on the contrary, much harm.

I have written you much more at length than I expected to when I began. But I have desired to say enough to enable you to under-

stand my views of the case. I have taken the liberty of writing to you frankly and fully of both our common interests and the relationship between us. For although we never met yet, I cannot but feel more of interest in one who is of my own blood than in one who is a perfect stranger. From my views of this business, there is something connected with it that I do not understand; some secret influence that is endeavoring to make the heirs cut their own throats.

Very respectfully,

(Signed) JAS. FARROW.

P. S. Please send or show this letter to your sister.

And deponent avers that he has not, as alleged in the affidavit of R. S. Morgan, withdrawn said letter, and that he has not made any effort or had any advice to do so; that on the contrary he expressly told Dade Hooe to show it, or give a copy of it to anybody that might want it, at the same time especially naming in said permission the aforesaid Messrs. Morgan. And deponent now reiterates said letter, and avers his belief that the allegation therein will be made good by competent and unimpeachable testimony, whenever an opportunity for so doing shall be allowed.

After writing this letter, in order that said Dade Hooe might certainly be informed of the facts above stated, deponent went to see him in person. He found said Hooe had received said etter, and now will understand the effect of policy he had been induced to pursue, and saw through the whole game that had been practised upon him and others of the heirs, and inquired how the evil could be remedied, to which deponent replied by first discontinuing the bill against Ingle for a receiver, and then filing a petition such as he and his sisters have filed, which was done as soon as the necessary papers could be prepared.

About the same time defendant wrote to his principals, the heirs in South Carolina, informing them also of the discoveries he had made of evidence as to the fraud practiced upon them, and as soon thereafter as he could prepare the proper papers, forwarded the same for their consideration and signature of approval. And though these papers have not yet come back to deponent, he has received letters from the heirs aforesaid, instructing and approving the taking proper steps to remedy the fraud aforesaid. And in accordance with such instruction and approval, deponent sent a petition, or the form thereof, to be modified, if necessary, to suit the particulars, which he is in daily expectation of receiving, signed and sworn to, and duly acknowledged. Deponent further states that since sending said form of petition to said heirs, he accidentally learned by an officer in the Post Office Department, that a recent order of said department, issued about the time of these papers being sent to the heirs aforesaid, prohibited any mail bags being delivered to any person who is not a sworn postmaster or mail-agent, the effect of which must have been to cause almost a total suspension of mails in many portions of South Carolina. Heretofore persons had been allowed to act as postmasters without taking the oath known as the test oath. In that way the principle country lines were enabled to have regular mails.

But the effect of the recent order will be to leave whole districts or counties in the interior of South Carolina, where the heirs of the aforesaid reside, without any mail facilities. Deponent further states that [that] the nearest regularly appointed and sworn postmaster he knew of to the heirs aforesaid, was at Columbia, and that was seventy-five miles from Laurensville, the village where the heirs aforesaid reside.

Deponent avers his belief that his principals, the heirs aforesaid, are sincerely desirous of having the aforesaid estate settled up as speedily as possible, consistent with justice and a proper investigation of the claims against it; and that their desire to have examined the aforesaid question of fraud is not to create any unnecessary delay, but solely to place before this court the fraud they believe to have been practiced upon them, and this deponent makes the same declaration as to his own purpose and wish.

Deponent further states that in his first interview with Dade Hooe, said Hooe expressed himself as satisfied that he had been deceived and defrauded, and voluntarily proposed that he and his sisters would give deponent a power of attorney, to take charge of their interests in said estate, and do with them as he might with the interests of the other heirs-at-law, which offer deponent not only did not feel at liberty to decline, but felt it to be his imperative obligation to accept.

In proof of the correctness of the estimate deponent placed upon the policy of said Geo. H. Morgan bill for enjoining Ingle and appointing a receiver, deponent refers to the files of this court, where it will be seen that after the proceedings aforesaid, under the mask of the names of Dade Hooe and sisters, as heirs, were put an end to by order of said Hooe and sisters, upon discovering the effect thereof; said Jones, failing to be able to use any other instrument in carrying out his designs, came forward himself, throwing off all disguise, asking the enjoining of Ingle and the appointment of a receiver, and this, notwithstanding the only acknowledged debts said Jones had upon said estate were liens, capable of easy enforcement at law, and which, moreover, the said Ingle, as stated in his answer to the petition of Jones, was ready and willing, then and there, to pay off and satisfy out of rents then in his hands. And notwithstanding, further, said Jones, in his bill of complaint against Stringfellow and others, stated, without reason or qualification, that the property of said estate was more than sufficient to pay all debts, reckoning his said claim as a debt; in the words following, to wit:

"And your orator further shows that said real estate, with the improvements, will bring an amount more than sufficient to pay all the debts of the said Anne R. Dermott, as well as the legacies bequeathed by her, including the aforesaid annuity." And when it is remembered the bill aforesaid was filed by said Jones against Ingle as well as others, and for the purpose of establishing said claim, and of subjecting said real estate to the payment thereof, said Jones' omission to pay in said bill, for an injunction against said Ingle, and for the appointment of a receiver, when viewed in the light of his subsequent proceedings, and other facts above set forth, justify the belief that

it was part and parcel of said Jones' scheme to secure the control of the interests of the heirs, if possible, to "counsel" who would make no opposition to his claim aforesaid, and who, in the next place, would assist in manacling the administrator, by so shaping the course of the heirs as to make them, under the delusion of securing rents, adopt a policy that would necessarily silence the opposition to said Jones' claim, and while tickling the heirs with the idea of calling Ingle to account, make them play, in respect to Jones' claim of over forty thousand dollars, the part of their own executioner.

The course adopted by deponent to meet this emergency, to wit, the appealing directly and immediately to Dade Hooe and sisters to desist from precipitating the impending evil upon their co-heirs, as well as themselves, was the only one open to deponent. And however it may have appeared to [to] said Geo. H. Morgan, or to Zephaniah Jones, it was not in controvention of any principle either of sound morals or liberal professional courtesy. That Dade Hooe and sisters were "represented in this court by counsel," was no reason why deponent should stand by and see said "counsel" use them to the sacrifice of the interests of all the heirs-at-law; nor was the fact that said Hooe and sisters were "represented in this court by counsel." any reason why deponent, when he saw the abyss to which his principals, as [as] well as said Hooe and sisters, were being hurried by said "counsel," should be hampered by a professional courtesy that never contemplated a state of facts such as distinguished this cause.

Deponent regrets the necessity of making this affidavit so long, but he could not make it shorter and do justice to the subject.

JAMES FARROW.

CLERK'S OFFICE OF THE SUPREME COURT
OF THE DISTRICT OF COLUMBIA.
January 15*th*, 1869.

I certify that the foregoing are true copies of the papers and documentary matters referred to in the foregoing agreement of the counsel hereto annexed, as the same remain on file and of record in this office.

Witness my hand and the seal of said Supreme Court.

[SEAL.] R. J. MEIGS,
Clerk of the Supreme Court of the District of Columbia.

1794

~~2~~ 1 Laws of
Chas.
R 90
4 Statutes at L.
10375

Supreme Court United States,

DECEMBER TERM, 1868.

INGLE ET AL. *vs.* JONES.

APPELLANTS' BRIEF.

ANALYSIS OF BILL.

THE Bill is filed by Zephaniah Jones as *sole Complainant*, on the 30th of August, 1865, (see *subpœna*, p. 29,) but by the concluding prayer it seeks relief in behalf of the Complainant and *all other* creditors of Ann R. Dermott, who may become parties and contribute to the expenses of the suit. See page 6.

It is, therefore, in reality a creditor's bill filed by and in the name of an alleged creditor to sell the real estate for the payment of debts, because of the insufficiency of the personal estate.

After setting forth the death of Miss Dermott in September, 1860, and her will which is made, Exhibit No. 1, it sets forth the fact that all the executors declined, except John P. Ingle, who qualified; and he dying, that letters *de bonis non cum testamento annexo* were granted by the Orphans' Court to John H. Ingle, one of the Defendants. And the Bill then charges that on the 22d of April, 1851, the Complainant and Miss Dermott entered into a sealed contract, marked Exhibit 2, for the erection of a building (formerly known as the Avenue House, on Seventh Street, in Washington City,) and avers that Jones fulfilled his part of the contract, except so far as prevented by Miss Dermott, and he also supplied extra work and materials. The bill admits the payment of $5,000, which by the contract was payable 1st July, 1851; but as to the residue of the payments provided in said contract, she refused to pay the installment ($5,000) payable on the 1st of October, 1851, although it was demanded by Complainant, and also refused to pay the $14,000, or to give security therefor, as provided in the contract, and failed moreover to pay for said extra work

and materials—that Jones sued her at law, and she dying, her executor, John P. Ingle, appeared and defended; and on his death John H. Ingle, as Administrator *de bonis non*, appeared and defended—that at the trial the verdict of the Jury found that Miss Dermott in her lifetime owed Jones $20,136.25, with interest from 5th of April, 1852, for which judgment was rendered, and upon appeal to the Court in *banc* it was affirmed, and upon the rendition of said judgment, the Auditor was directed to enquire into assets, and he reported no assets (remaining in the hands of administrator) to pay the same. The Bill then charges that said judgment is conclusive evidence of Jones' claim as against all parties representing the estate real and personal—that Jones had also formerly filled a Bill in Equity for specific performance of said contract, and that he being held to an election between said suits elected to prosecute the action at law for the $5,000 only payable under said contract on October 1st, 1851, and having obtained said recited judgment for $20,136.25, and exhausted all legal remedies, he now seeks the aid of Equity as auxiliary to a Court of Law, to obtain sale of the real estate, and he avers that he is not barred by such election. The Bill then describes the real estate sought to be sold, and the liens thereon, and avers that Miss Dermott owed above said lien debts, and the debt claimed by Jones, the sum of about $6,000 due to various creditors—that the executor and administrator *de bonis non* collected and managed the rents, and the latter leased it to various tenants, whose leases will shortly expire if valid, but charges that the administrator had no authority to make said leases.

That the real estate will bring more than enough to pay all the testator's debts and legacies, and the Bill charges the nullity of the residuary bequest to charity. And then after making the residuary trustees, as well as the Administrator *de bonis non*, and the executors of John P. Ingle, and the heirs-at-law of Miss Dermott, defendants, it prays an account of her personal estate and of all rents collected, that the real estate may be sold, and Complainant's claim and all other debts paid out of the proceeds. "Exhibit 1" is the will of Miss Dermott. "Exhibit 2" is the sealed contract, dated April 22, 1851, and by which Jones was to do the whole work, and erect buildings fit for use and occupation for $24,000, of which $5,000 was admitted to have been paid 1st of July, 1851. By the contract the remaining $19,000 was payable as follows: $5,000 1st of October, 1851, provided certain portions of the building intended for stores were then finished ready for occupation, and the $14,000 on the 1st of January, 1860, with interest on $4,000 from 1st of May, 1851, and interest on $10,000 from the 1st of December, 1851, when the whole work was to be completely finished and delivered over, and this $14,000 was to be secured by a lien on the property.

It would seem from the phraseology of this Bill that the Complainant was relying on the sealed contract, and had recovered on it at law; while in truth, as we shall show, he abandoned it after his two signal failures to enforce it, and which are reported in

23 How, 226.
2 Wallace, 1.

ANALYSIS OF THE SUIT AT LAW.

The suit at law was brought on the 13th of July, 1852, (p. 92 of this record,) and by the election of Jones at March Term, 1856, (p. 97,) he only claimed in that suit, by action of debt, the $5,000 which was payable the 1st of October, 1851, under the sealed contract.

At same March Term, 1856, he filed an amended *narr.*, claiming only the $5,000 in the three first counts, but claiming in the 4th count $10,000, and appending a bill of particulars reducing this 4th count to extra work (not in the contract) amounting to $1,136.23½.

Pages 101, 106.

The verdict and inquisition at the first trial resulted in a recovery of the $5,000, and the bill of particulars, $1,136.25½. Page 113.

But the judgment on that verdict was reversed in

23 How. 226.

Under the mandate of this Court the case went back, and the Plaintiff amends his *narr.* into *assumpsit*, and claims $40,000, and by his bill of particulars $39,864.28. Pages 117, 125.

Thus evidently abandoning the special contract, and seeking to recover on a *quantum meruit* the whole work done. To this the Defendant filed *non assumpsit*, and also a notice of recoupement for damages.

Page 125, 6.

Interlocutory judgment was recovered at October Term, 1861, for $22,149, with interest on $20,136 from 5th of April, 1852, referring it to the Auditor to report the proportion of assets in the hands of the Administrator, (p. 127,) and on his report coming in it was made final.

Page 127, 131.

Exceptions having been taken that judgment was reversed. See page 132.

2 Wallace, 1.

It will be observed that this whole record of the suit at law was introduced by Jones' Counsel when he filed the mandate A, which is the mandate on the second reversal; and it does not appear that said record or mandate were filed before the Commissioner taking the evidence, for the Commissioner closed the evidence on 2d of June, 1860, by order of Complainant. See page 84.

And by the certificate of Clerk Meigs, the mandate and proceedings resulting in the third verdict was not filed in Court by the Commissioner, but merely with the Clerk, on 4th of June, 1864, two days after the Complainant's testimony was closed. See page 90.

But by the 13th rule of this Court, the whole of this Law Record is to be taken as admitted by consent of parties, no objection being taken to it in the Court below.

It thus appears by the entire Law Record that Jones entirely discarded the sealed contract, and claimed to recover in *assumpsit*, as on a *quantum meruit* for the whole claim, otherwise he could not have recovered under the special contract in any event more than the $5,000 payable on 1st of October, 1851, and for which he had elected to sue at law, and for all the residue ($14,000) in equity. See page 97.

Nor could Jones in any event recover in that suit at law the $14,000 payable under the sealed contract on the completion of the building, because, by that contract, it was only payable 1st of January, 1860, (see p. 15,) and his suit at law was instituted on 13th of July, 1852, nearly eight years before the $14,000 could mature under that special contract. See pages 92 and 15.

Now we have an extraordinary spectacle of a verdict and judgment at law manifestly based on a *quantum meruit*, and awarding the value of the entire work as a debt due to Jones on the 13th of July, 1852, the date of the suit; and yet, strange to say, assuming as the principal of that debt the sum of $20,136.23, with interest from 5th of April, 1852, $19,000 of which is the balance of the identical contract price ($24,000) after crediting the $5,000 admitted by the Bill to have been paid on July 1, 1851, and the balance of that verdict and judgment is within a half-cent for the identical $1,136 23½ claimed in the Plaintiff's Bill of particulars filed in the lawsuit for extra work, (p. 104, 106.) The aggregate of these two items makes within a half-cent the amount of the last verdict and judgment, and thus demonstrates that while professing to discard the special contract *in toto*, the Plaintiff was fortunate enough to get the Jury to adopt it as to the price to be paid for the work, but to disregard it as to the times of payment, and also fortunate enough to find a Jury to disallow all the damages stated in our notice of recoupement, and which we were entitled to under the ruling of this Court in

2 Wallace, p. 9.

But be that as it may, the fact is patent that if Jones could recover in *assumpsit* for the whole work in a suit at law instituted in July, 1852, his cause of action was old enough to have accrued at that date, that is to say, fifteen years before the filing of this Bill in equity, predicated on that identical cause of action. If this then be an original

suit in equity by a sole Complainant to sell real estate to pay this debt of fifteen years standing, it is clearly barred by limitations if it cannot be supported by the judgment at law, which is relied on as conclusive of the debt, and as auxiliary to which judgment this suit is brought as stated in the Bill.

First Point.—*The supposed judgment at law is inoperative and of no effect in this equity suit.*

(*a*) It was on its face, but interlocutory and not a final judgment. Pages 89, 90.

The proceeding in this suit at law is regulated by the Acts of Maryland in force in this District at the date of its cession to the United States—Congress having adopted all those Acts in 1801.

As Miss Dermott was sued in her lifetime and died pending the suit, and her Executor appeared and died before final judgment, and then the Administrator *de bonis non* appeared, the case falls precisely under the provisions of the Maryland Act of 1786, ch. 80, sec. 1

By this Act it is substantially declared that "the representative so appearing, shall not be burthened with the debt, damages or costs further than property or assets have come to his hands."

And the Act of 1798, ch. 101, sub-ch. 7, enacts that "an Executor or Administrator need not plead *plene administravit*, or anything relative to the assets."

And the 8th sec. of sub-ch. 8 clearly shows that after verdict "on the issue joined against the Administrator, the Court shall assess the *pro rata* of assets which he ought to pay."

And the 9th sec. of same sub-ch. authorizes the Court "when the real debt or damages are ascertained (meaning by verdict or confession, as recited in the 8th sec.,) to refer the matter to the Auditor, to ascertain the sum *for which judgment shall be* given; and in case the judgment shall be for a sum inferior to the real debt, it shall go on and say 'that the Plaintiff is entitled to such further sum as the Court shall hereafter assess on discovery of further assets in the hands of the Defendant.'"

Upon these facts it is very clear that no judgment can be entered on a verdict establishing the debt of a decedent, until the Court assess or ascertain the *pro rata* of assets then in hand, and the judgment is against the Defendant for that *pro rata*, and for the residue of debt, when any further sum shall be discovered and assessed; and this is the only judgment that can legally be rendered after the *pro rata* of present assets is ascertained, or the non-existence of present assets is es-

tablished. In the latter case, there being no *pro rata* in hand, the judgment must be entered up for the debt of the Testatrix, payable out of assets when they shall be thereafter discovered and assessed.

Our proposition is that no judgment can be rendered under these Acts until it is judicially ascertained on an Auditor's report or otherwise, that there is, or is not, any assets in hand, and when this fact is ascertained, the judgment is entered and moulded accordingly.

The Clerk in this case has erroneously extended the Record of the law case, so as to suppose there was an interlocutory judgment establishing the debt, and referring it to the Auditor, when there was nothing but an order of reference to the Auditor. See pages 89 and 90.

The true entry and making up of the record is shown in the form in
2 Harris' Entries, p. 104.

By this old and approved book of precedents, it will be seen that there is no entry even of an interlocutory judgment on a confession of the debt, (or by analogy on a verdict establishing it,) until the Auditor's report is made. We therefore maintain that there was in law no judgment whatever by the Law Court on this verdict.

But it may be said that the statement in the Record, p. 90, that the Court in general term affirmed this judgment on appeal, and adjudged 'that the Plaintiff recover against the Defendant the damages aforesaid in manner and form aforesaid adjudged, to be levied as aforesaid when ascertained by the Auditor as directed in said judgment" Page 90. [redacted] has the form of a judgment as against the Administrator for the whole debt, to be levied when ascertained, &c.; but it is in fact, and so manifestly intended to be, merely the affirmance of the order referring it to the Auditor, and directing that judgment shall be entered when the Auditor reports.

Any other construction would make the Court violate the statute and give judgment before the Auditor reported, or they had the necessary elements of the judgment. But conceding that this is a judgment of the Court affirmed at general term, it is on its face interlocutory and incomplete. It would no more operate in a collateral proceeding than an interlocutory judgment on demurrer or by default would, and it has been held that such an interlocutory judgment is not a lien upon the real property, because no execution could be issued on it against the lands.

Davidson *vs.* Myers, 24 Md., 555.
4 Peters, 136.
1 Tidds' Practice, 568.

This view is adopted by the late Auditor of the Court, the late W. Redin, than whom no one was longer conversant with or better under-

stood the practice in the District—for, in his report in this very case the 7th of July, 1865, he says that "final judgment can be entered only for assets as they may arise," and there has been no judgment since that report. See page 158.

If there has been no final judgment of the Court the proceeding is not conclusive.

1 Greenl. Evidence, sec. 529.
9 Carringt. & Payne, 196.

Certainly no writ of error could be sued out on the alleged judgment in the suit at law, because it is only interlocutory and not final, and the Plaintiff is in default until he perfects his judgment, as he might do on application for a judgment on the Auditor's report, adjudicating the debt, and for assets *quando accidemul.*

At common law no writ of error would lie on this interlocutory judgment, because on its face it does not dispose of the whole matter involved, but leaves the proportion of assets unascertained, and no execution could issue on such a judgment.

11 Coke, 38.
12 Wendell, 658, 668.
1 Rolls' Abr., 751
15 Peters 287

The Act of Congress conferring appellate jurisdiction on this Court, allows a writ of error only to final judgments, orders, &c.

In 6 Peters, 657-8, this Court held that a writ of error would not lie to an interlocutory order.

In 8 Peters, 260, it is held that "a judgment quashing an injunction, and directing another to be taken, was only in the nature of an order setting aside a verdict," and therefore error would not lie.

And so we argue the alleged judgment in this suit at law, is only in the nature of a preliminary order referring the amount of the verdict, and its proportion of assets, to the Auditor for his report.

In Vanness vs. Vanness, 6 How. 67, the order of the Court to certify a verdict to the Orphans' Court, which was decisive of the real matter in controversy, was held not to be a final order or judgment, but only interlocutory, because the *pro forma* judgment was to be entered in the Orphans' Court in conformity to the verdict so certified, by the express provisions of law.

In page 68 of this last case, this Court remarked that "a verdict in any Court of law, if not set aside, is in all cases conclusive as to the fact found by the jury, and the judgment of the Court must follow it, as the Orphans' Court must follow the verdict in this case, yet a writ of error will not lie upon the verdict."

Here in fact the order referring the case to the Auditor merely

affirms the verdict, and seeks *data* on which to enter final judgment on that verdict as against the Administrator *de bonis non*. Therefore we maintain that there is no judgment as yet on that verdict establishing Jones' debt.

B. But so far as this Bill in equity, to sell the real estate, relies on the verdict and interlocutory judgment at law, it is clearly inadmissible to affect the heirs-at-law who are Defendants, because Miss Dermott dying, her Administrator appeared to that action at law, and the judgment establishing the debt only binds the personal estate, as the Administrator only defended the suit in his character of Administrator. The fact that the same person filled the office of Administrator of the personal, and the rents of the real estate, does not make the judgment any more operative against the land than if the trustee was a different individual. These principles are fully decided in

3 G. & J. 259.
5 G. & J. 432.
8 Peters, 528.
6 G. & J. 9.

Assuming that the rents were personal estate in equity in the hands of the Administrator, yet the *corpus* of real estate sought to be sold was not converted into personal by the will.

The result then seems to be that the alleged judgment establishing Jones' debt at law, cannot be relied on in this case, either as estoppel on Ingle as Administrator, or as evidence for any purpose against him, or any of his co-Defendants who were strangers to it. As the pretended judgment was no lien in any event on the real estate, this Bill cannot be supported upon the idea that it is necessary to enforce a lien where none existed.

The Complainant must support his Bill by independent evidence, and not by relying on an imperfect judgment at law, against an Administrator who is shown by his own record to have no assets.

Second Point.—*John H. Ingle as Administrator, with the will annexed, represented the rents and profits of the real estate under the will.*

In this bill, John H. Ingle, the administrator *de bonis non* with the Will annexed, was made a Defendant, together with the heirs at law and certain trustees and legatees named in the will.

Ingle answered the bill, denying the justice of Jones' claim and pleading the statute of limitations. See his answer filed 7 October, 1865, page 30.

Other answers were filed by some of the heirs at law, but they will be hereafter considered under a distinct head.

The first question of importance on this point is whether John H. Ingle, as administrator *de bonis non*, with the Will annexed, succeeds to the trust estate vested in the executors, until those trusts are satisfied by the payment of debts and legacies, which it is conceded on all hands were not paid at the filing of the bill.

If, as we contend, he has succeeded to the powers and title of executor, under the will of Miss Dermott, then the most important consequences will result, as will be hereafter shown.

As this is a question of construction and intention, we herewith submit an abstract of the will of Miss Dermott, as found on p. 6.

She devises to her executors and their survivor, exclusive possession, care, stewardship, &c., of all her property during the uncertain term thereinafter mentioned, with power to lease or rent real estate and collect rents during said term, and no longer, and out of the rents and her personalty not otherwise disposed of, to pay out and expend all moneys required by her will of them, as executors.

1. The executors are to pay her funeral expenses.

2. To pay her just debts without limitation of time in their discretion.

3. To sell five lots in cemetery and buy twelve burial sites in the Congressional cemetery when authorized, for bodies of herself, mother and brother. (Then follows tedious directions about the vault, &c.)

4. To pay an annuity of four hundred dollars to her two cousins, Elizabeth S. Thompson and Catharine F. Thompson, during their joint lives, and the survivor, *provided* the Executors shall only be chargeable with this annuity so long as their official duties under the will are *executory*, but when *executed*, *the annuity* is to be charged on the rents of real estate.

This annuity she wishes to be a preferred legacy, paramount to the pecuniary legacies to be thereinafter given.

5. To raise and pay the following pecuniary legacies:

$1,000 to Robert James, her cousin, of Alabama.
$1,000 to Rich Smith.
$500 to Walter Jones.
$500 to widow and children of Rev. Mr. Hawley.
$200 to Genatta Johnson.
$200 to Sophia McCormich.

6. To pay, in their discretion, all debts not exceeding $1,000, of her brother, contracted since April, 1829.

7. Household effects, &c., bequeathed to her cousin, Mrs. Maria Anderson, of South Carolina, and to E. L. and E. F. Thompson.

8. To Robert James all her right under will of her aunt, Mary James, of Stafford county, Va.

9. Authorizes sale of two vacant lots, but wishes all the residue of improved property kept *sacred, to pay annuities and pecuniary legacies, and her brother's debts*, and with power to mortgage the same if necessary, to pay off creditors.

10. She appoints eight executors, (all of whom declined but J. P. Ingle, p. 88,) who are to hold *until all the aforesaid debts and legacies are satisfied*, when they are to render the whole residue of moneys and property to the named trustees, in trust for the use of such corporations as may within twenty years after the death of the surviving trustee, be legally constituted to administer the charity contemplated, and until it is incorporated, the trustees are to collect and invest and may apply the income to establish and endow the charity by way of anticipating the functions of the corporation when it comes in *esse*, when they are to surrender all to the corporation. The charity described is to be a Female Orphan Asylum, subject to certain regulations laid down by her, and to such charter as may be granted.

The beneficiaries are such destitute white orphans as the trustees before incorporated, or the corporation may select, and all her estate is to continue subject to the annuity to the Miss Thompsons. (And then it concludes with many pages of detailed instruction about the management of the Asylum.)

This syllabus of the Will will show its general outline and scheme.

There is no doubt of the nullity of the ultimate devise to charity on account of the uncertainty of the objects.

8 Md. Rep., 555; 9 Howard, 76.

It is, therefore, manifest, first, that the executors were to continue to administer the real and personal estate until all her debts and pecuniary legacies were paid. Secondly, That there is no power to the executors to sell her real estate except two vacant lots, and the trust, therefore, is confined to the rent and income of the residue.

By this abstract it is manifest that when John P. Ingle, the sole executor died, the trust was unexecuted, it being shown on the face of the Bill that various debts were still unpaid The testatrix had contemplated this very event, and provided, as she supposed, for the continuance of the trust. She expressly says, that "if the surviving executor shall die while the trusts are executory, the execution of her will, &c., shall *not* devolve upon the executor, &c., of such deceased executor, but upon such person or persons as the vestries of St. John and Trinity Churches may elect to go on and complete this Will in so far as the execution thereof is committed to my said executors, and

she desires that proper letters of administration with her Will might be granted by the court or authority competent for the purpose, to the person or persons so elected."

Undoubtedly the testatrix contemplated that the persons should be selected by the vestries, and that such persons should be clothed with the office of administrator, with the Will annexed, before he should succeed to the trust.

She contemplated the occurrence of two events, viz: the nomination by the vestries and its ratification by the Orphans' Court. But she has failed to say what her intention was in case the Orphans' Court appointed a person as administrator against the nomination of the vestries, upon their *failure to nominate*.

Did she mean to let the great trusts of her will fail in this last case, or are we to construe her will as containing two intents—first, a particular intent that her administrator should be named by the vestries—Secondly, a *general intent*, that her administrator, however appointed, should be the trustee. If so, and both intents cannot be gratified, the rule is to construe the will upon the *cy-pres* doctrine, and sacrifice the particular intent which in such case is construed as merely directory and not *imperative*.

Tiffany on Trusts, 758–9.
11 Johnson, 169.

That this question depends on the intention of the testatrix.

See 25 Wendell, 232.

Her intention was manifestly to substitute her administrator *de bonis non* in the place of her executors, if they had not completed their administration, but to allow the vestries to nominate, if they chose so to do.

"Where testator directs his real estate to be sold for certain purposes, without declaring by whom the sale shall be made, if the fund is distributable by the executor, he will have the power by implication."

1 Sugden on Powers, 135, (side.)
Meekings *vs.* Cromwell, 1 Selden, 136.
10 Peters 565

The reason given by Ruggles, Chief Justice, in Meekings *vs.* Cromwell, is that "it belongs to the executor to pay the debts and legacies, and the testator having directed that to be done by a sale of his land, the executor should have the power to sell as incidental to the accomplishment of the testator's main purpose."

1 Selden, 142.

All the authorities are fully reviewed in the above case.

In Craig *vs.* Leslie, 3 Wheat. 563, the proceeds of real estate sold under a power in a will was regarded aa a bequest of personalty."

And in Bogert *vs.* Hertell, 4 Hill, 492, Chief Justice Nelson, after reviewing all the authorities, decided that a fund arising from a sale of land under power in a will to pay debts or legacies, was to be regarded to all intents as personal estate in the hands of the executors to be distributed as money."

See also, 2 Story's Eq., § 1060.

If these principles be established it clearly results that the dedication by a testatrix of the future rents and profits of land, (without a power to sell the *corpus*, except two lots,) together with her personal estate as a mixed fund to pay debts and legacies, would impress the whole fund with the character of personal estate, and as such in the absence of a declaration who should receive and apply the fund, it would necessarily go to the executor to be administered as any other personal estate, and upon death of the executor, it would be considered in equity as belonging to the administrator *de bonis non cum testamento annexo*, so long at least as the payment of debts and legacies required the preservation of the trust.

Every argument of implication from the character of the fund and the purposes to be accomplished would tend to confer the title on the administrator *de bonis non cum testamento annexo*.

Judge Story, in 2 Story's Equity, § 1060, expressly declares that, "As the executors are liable to pay the debts, and if the lands were money, as they would be, the proper parties to receive it for that purpose, Courts of Equity will hold it to be the intent of the testator, that the parties who are to receive and finally to execute the trust, are the proper parties to sell for the purpose."

The same considerations apply to operate a transfer of all the title of the deceased executor to the administrator with the Will annexed, because of the character of the fund and the purpose of paying debts and legacies, which is a duty as much devolving on the administrator *de bonis non*, as on the executor.

By the Act of Maryland of 1798, ch. 101, sub-ch. 5, section 6, it is provided that "upon the death of an executor before the estate is fully administered, letters *de bonis non* shall be granted agreeably to the rules hereinbefore laid down," &c.

And by sub-ch. 3, section 3, and other sections, provision is made for letters of administration with the Will annexed.

And by section 8 of same sub-chapter, it is declared that "if letters of administration with a copy of the Will annexed be granted, no executor therein named, shall in any manner interfere further with the administration."

Under these explicit provisions we hold that all the trusts, powers and titles which belonged to the deceased executor as such, legally survive and devolve on the administrator with the Will annexed. This theory of construction is conceded on the first page of the bill, where it is claimed that the executors, as such, were invested with the title for a term limited by the payment of debts.

This brings our case precisely in line with the decision in Depeyster *vs.* Clendenning, in 8 Paige, 310 and 311, where, under analogous provisions in the New York statutes, "the administrator with the Will annexed was held probably entitled to execute all the trusts of the Will in the same manner as if he had been named therein by the testator as the executor and trustee."

But in the case of Depeyster *vs.* Clendenning, the executors appearing not to have received the *trust qua executors*, and there being at least a doubt of the testator's intention, the Court decreed to settle that doubt that the administrator with the Will annexed should be substituted as trustee in the place of the three persons named as trustees and executors, who had refused to act. See page 311.

In illustration of this same point, see

Forbes *vs.* Peacock, 11 Mees & Welsby, 236.

In concluding this point, there is nothing to show that the vestries ever made a nomination of any person as administrator *de bonis non*, and if they had done so the Orphans' Court had uncontrolled discretion (in the absence of next of kin) to appoint, regardless of such nomination. At the date of this bill in Equity, Mr Ingle, as administrator with the Will annexed, held the title of all this real estate as well as the personalty, if any existed, in trust, to pay debts and legacies. The bill sought to sell this real estate, and wrest the rents and profits from the purposes to which they were appropriated specifically by the Will—therefore Mr. Ingle was entitled to defend the estate, and challenge the claims of the Complainant. As such administrator, he fully answered the bill and among other defences pleaded the act of limitations.

It will be observed that the subpœna having been served on Mr. Ingle on the 31 Aug., 1865, to appear at the next special term occuring 20 days after service, he was not bound to appear under the equity rule of the Court below, until the first Tuesday in Oct. 1865, which

was the 3 Oct., on which day he was defaulted by an order *pro confesso*, all of which will appear in Page 29.

But on the 7 October, 1865, Mr. Ingle appeared and filed his answer, thus setting aside the interlocutory default under the said rule of Court. See page 30.

Even if there could be any doubt of this, the Complainant waived the objection, and replied to all the answers filed 6 March, 1866, including of course, the answer of Ingle, and thereby treating it as on file. See p. 37.

If then the Administrator *de bonis non*, under the Will, represented the real estate, so far as its rents were appropriated to the payment of debts and legacies, many important results followed, as will be shown by looking at his answer. Page 30.

THIRD POINT.—*The theory of the Bill that the special contract was performed, disproved.*

We have already demonstrated the fact that the pretended judgment at law was based on a *quantum meruit*, and utterly ignored the sealed contract, except so far as it adopted the contract price, while rejecting its terms and conditions of payment.

And we have argued that this Bill could not be supported by any reference to that record.

The Bill on its face is artfully drawn to create the impression that Jones had fulfilled every portion of his contract, and was therefore claiming strictly on his contract, and on a bill of some $1,136.23, for extra work.

These allegations are flatly denied. Page 30-31.

They are not proved either by the law record, if it was competent proof, or by the parol evidence taken in this case, for both show the utter inability of Jones to recover on the special sealed contract.

The two decisions of this Court effectually barred his recovery on that contract.

1. Because he had not performed the conditions precedent required in

23 Howard, 226.

2. Because he had not repaired the damages caused by a settlement of the building, but abandoned it in a dilapidated and ruinous condi-

tion, contrary to the obligations imposed on him by the rulings of this Court in

2 Wallace, p. 9.

His own evidence, and his main witness, Harkness, as taken in this cause, fully establish that, if he recovers in this case, it must be alone on a *quantum meruit*, and not on the sealed contract, which he violated repeatedly, and then wilfully abandoned, to be completed by others at a heavy cost to Miss Dermott.

This is proved by a reference to Jones' own testimony in pages 70, 71, 72, 80, 81 and 82.

And by Harkness, in pages 62, 63.

The fact being conceded by both Jones and Harkness, that the building was not turned over by Jones to Miss Dermott until the spring of 1852, long after the contract time had expired; and that it was then in a dilapidated and dangerous condition, and had to be reconstructed in part by Mr. Neirnsee for Miss Dermott, they both undertake to excuse Jones on various grounds. First. They reiterate that Jones was not responsible for the sinking of the walls and leaving them in that condition.

See Jones, p. 81.

Harkness admits the settlement, and that he saw buckets of blue marsh mud brought up from a well under the building, (p. 52, near top of page;) also, that it was a bad place to build, (p. 57.) But he thinks the settlement was caused by Miss Dermott's having added some hanging chimneys on the south wall of the warehouse, which only weighed 20,000 pounds. Page 57.

It is simply ridiculous to say that 20,000 pounds added at any point on the wall of a warehouse designed to carry enormous weights when finished, caused this settlement. If so, it must have been unfit for use when finished, even if the chimneys had not been added.

Jones refused in his examination before the jury to endorse this opinion of his witness Harkness, and stated that the settlement was owing to a defect in the earth, (see page 72, at bottom;) but afterwards in his examination in equity, he rather inclined to go with Harkness, and thought this 20,000 additional weight had broken the camel's back.

Page 79.

Assuming that these hanging chimneys did the mischief, it is proved by Jones and Harkness that it was at Jones' instance that certain large chimneys on same building called for in his contract were dispensed

with, and these hanging chimneys substituted in their place without charge on his part, as a condition which she required to the proposition of Jones, and that they were voluntarily erected by Jones himself.

See Jones, p 72.
See Harkness, pp. 59, 60.

2. That Jones' delay in completing the buildings at the stipulated times, was owing to the interference of Miss Dermott calling for extra work and changes in the contract, and they enlarge tediously and argumentatively upon numerous trifling alterations, all of which they admit Jones made under protest.

In answer to all these excuses, it is enough to say that Jones himself admits that he never did make any contract with Miss Dermott for an extension of time in consideration of his consenting to make these alterations, (see page 72, at top,) the trifling character of which appears by Jones' bill of particulars therefor, in which he claims that their amount in value is $1,136.23½.

See pp. 104-6.

If the Court desires to see how few of the items in that bill for extra work were really chargeable to Miss Dermott, the cross-examination of the witness Harkness will enlighten them.

See pp. 53-64.

Now this Court has said that where a contract stipulates for its execution at a given time, and it is altered by consent of parties, in any particular, without any stipulation for an extension of time, it will be presumed that the parties meant to adhere to the limit of time established in the original contract.

23 How., p. 220.
2 Wal., p. 1.
See also 44 Law Lib. in the notes to case of Powell & Cutter.
1 Parson on Contracts, 541, 542.
2 Greenleaf Ev. sec. 235 and notes.

The case of Abbott vs. Gatch, 13 Md., 329, illustrates forcibly this rule of law, and shows how frivolous are the excuses set up by Jones and Harkness in regard to the alterations suggested by Miss Dermott and executed unconditionally by Jones.

Where a sealed contract has been varied by parol in any part while in *fieri*, the whole contract is turned into parol, and the remedy must be in *assumpsit* upon the original contract as modified.

Fresh vs. Gilson, 16 Peters, 327.

We therefore hold that upon the evidence Jones failed to perform his contract, ~~and~~ as averred in the answer of the Administrator *de bonis non*, and therefore upon the merits the final decree of this case, (page 170,) for the aggregate amount of the contract price, (less $5,000 paid,) and the bill for extra work, should be reversed

FOURTH POINT.—***The defence of limitations in the answer of the Administrator, with the Will annexed, bars the debt of Complainant.***

We have shown that Ingle as Administrator, is invested with the title to the rents of this real estate, until the payment of the debts and legacies—that for the pupose of paying debts and legacies, the rents are to be treated in equity as personal estate.

The trust to pay debts out of these rents, but not by a sale of the *corpus*, would prevent the Administrator from pleading limitations to a creditor claiming under and in pursuance of the trust.

Angell on Limitations, sec. 169.

But here the creditor claims adversarily to the trust, and seeks to destroy it by sale of the real estate, which produces the trust fund.

In such a case there can be no serious question of the right of the Administrator (having an interest to preserve the trust,) to rely on limitations as against a creditor seeking to destroy his trust.

And it would seem that the rule in equity which prohibits a trustee from pleading limitations against his *cestui que trust*, would be dispensed with where the Administrator could plead limitations if sued at law.

Angell on Limitations, sec. 170.

That an Administrator in this District may, in his discretion, plead limitations when sued at law by a creditor.

See Act of Md., 1798, ch. 101, sub-ch. 9, sec. 9.

The Testatrix certainly contemplated a duty in her Executors to prevent any interruption of the trust by creditors and left it at their discretion to plead limitations.

Record, pp. 6 and 9.

If then as the evidence proves, Jones can only claim on a *quantum meruit*, as for a simple contract, he must either claim upon a cause of action complete at his surrender of the buildings in April, 1852, and against which limitation clearly applies to bar this suit.

Or, he must be bound by the stipulations in his special contract as to the terms of payment, the last of which matured on the 1st of January, 1860, five years and seven months before the filing of this Bill.

See p. 15.

In either case, whether on the contract, or on a *quantum meruit*, he is barred by the three years' limitation as on a simple contract, provided the sealed contract has been varied by parol.

Act of Md., 1715, ch. 23.

But even if the sealed contract was not varied, but fully executed by the Plaintiff, he could sue *indebitatus assumpsit*, as decided in this very case.

2 Wallace, p. 9.

Nor can it be said that the diligent prosecution by Jones of his protracted suit at law against Miss Dermott in her life, and the continuation of it against her personal representatives, is any reply to the bar of limitations when, in 1865, he commenced a new suit in a distinct *forum*, and against new parties, upon the same cause of action, or any part of it.

1 Harr. & Gill, 103.

Upon the theory of this Bill, the special contract was observed and fulfilled. If so, Jones in the suit at law could only recover the $5,000 installment due 1st of October, 1851, as no other was due at the institution of that suit in July, 1852.

Record, 92.

Yet, by his decree, he has recovered $20,136.23, which is clearly erroneous on the theory of his Bill, being ancillary to the suit at law, and yet based on the sealed contract as its true and only cause of action, beyond the $1,136.23½ claimed for extra work.

Nor is there any force in the argument that Jones' cause of action against the real estate did not exist until he had exhausted his suit against the Administrator to test the insufficiency of the personal estate.

There are cases where a Plaintiff having exhausted his remedies at law, may come into equity to obtain relief such is the case where a creditor after a return of *nulla bona* at law, may file a bill to change equitable assets of his debtor, but this case is different.

The right to sell the real estate of a deceased debtor, upon the insufficiency of his personal estate, can only be maintained, if at all, by the

Act of Md., 1785, ch. 72, sec. 5.

Which literally does not authorize the sale if the Decedent left adult heirs, and in this case no minor heirs are shown. No other law of Maryland prior to 1801 authorized this sale, and the doubt whether chancery could, under the circumstances of this case, sell real estate, was only solved in Maryland by the later Act of

1818, ch. 193, sec. 3.

The history of this question in Maryland, and the doubt whether by the Act of 1785, will be seen in the learned opinion of Judge the sale of Miss Dermott's real estate under this Bill, was authorized Magruder.

4 Gill ~~4 G. & J.~~, 373-4.

But assuming that the equity of this Act of 1785, ch. 72, sec. 3, authorized this sale, the heirs being adults, it is manifest under that Act that no preliminary suit was necessary to test the insufficiency of the personal estate; but the moment Miss Dermott died, Jones could have filed this creditor's bill, and ascertained at the same time, and in the one suit, the amount of personal estate, and enforced the creditor's lien on the real estate for the deficiency. And so it was decided in

4 Gill ~~4 G. & J.~~, 379, 380.

If then Jones could have filed this Bill, at the death of Miss Dermott in 1860, his cause of action then arose, and, in fact, had arisen, in 1852, if the special contract is ignored.

In a creditor's bill like this, limitations when relied on in an answer runs against the creditor until he files his bill, or enters his claim under the general creditor's bill.

3 G. & J., 503.

Looking singly then to the issues made by the answer of the Administrator Ingle, we hold that the decree was erroneous, both on the merits of the case, and on the statute of limitations.

FIFTH POINT.—***The answers of the heirs at law of Miss Dermott were obtained by contrivance and fraud, and should have been taken off the files, that they might answer de novo.***

On the 9th October, 1865, Dade Hooe and his two sisters, Lucy J. Daniel and Mary D. Hooe, three of the heirs at law, filed their answer, admitting fully the justice of Jones' claim, and consenting to a sale of the land.

See it in the Supplemental or Diminution Record.

On the same 9 Oct. 1865, Maria S. Anderson, Jane S. Farrow, Susan W. Garlington, and her husband, John Garlington, Eliza L. Ballow and Benjamin James, in his own right and as administrator of George and James, answered, "consenting to the payment of what was justly due to the Complainant, as well as the other creditors who hold specific liens upon the real estate." Record, p. 33.

On the 23 May, 1866, after Jones had filed his replication, and before the return of the Complainant's testimony, which was not closed until 2 June, 1866, (see p. 84)—Dade Hooe, Lucy J. Daniel and Mary D. Hooe, filed their petition to withdraw their answers from the files and answer *de novo*. See Supplemental Record.

The petition of Dade Hooe and his sisters states a grievous case of wrong and imposition on them. It shows that their ancestor, Miss Dermott, died in 1860, just before the war, and they heard that she had willed her whole estate from the heirs, that the war breaking out in 1861, they were cut off from all further information until its close—that in September, 1865, one R. S. Morgan came to them accredited by letters of introduction from Washington, professing to take a friendly interest in their behalf, and concealing from them the nullity of the devise to charity, advised them that it could only be got rid of by acquiescing in the just claim of Z. Jones, an honest creditor, amounting to $37,000, which, if allowed, as it ultimately must be by course of law, would with other undisputed debts, and the specific legacies, absorb so much of the real estate, worth as he represented, $120,000, as to leave too small a surplus to carry out the charitable bequest, and the heirs would necessarily realize that surplus, but if Jones' claim were defeated by the quibbles of law with which the administrator for selfish and unjust purposes had been litigating it for so many years, then there would be such a surplus as would establish the charity, and the heirs would get nothing. The story was artfully got up and insidiously presented to these aged persons, and it will be observed that according to the statements of this petition Mr. Morgan studiously concealed many material facts, especially the fact charged in said petition, that he was an emissary of Jones to obtain these friendly answers. And the petition charges the grossest deceit and misrepresentation on the part of said Jones for the express purpose of obtaining by his said agent these answers, which was successful under the circumstances in obtaining not only these answers, but a bill by said Dade Hooe and his sisters to remove Ingle from his trust, but which on discovery of the imposition practiced on them they dismissed. This petition was duly sworn to by the petitioners and set for hearing on the 11 June, 1866, by order of the Court, and upon due notice to Jones. Record, 136–7.

Jones filed his answer, denying the allegations of this petition, and exhibited the *ex parte* affidavits of G. H. Morgan, and his brother R. S. Morgan. Pages 137–143.

R. S. Morgan, who obtained the answers, swears that he knew no other principal but his brother, G. H. Morgan. P. 142.

And G. H. Morgan no where denies the privity of Jones in the matter, but says he sent his brother to obtain this business for himself, as he had been present at two of the jury trials, and found out that the Supreme Court had only reversed two judgments in favor of Jones on technical grounds. P. 139.

We excepted to these *ex parte* affidavits (p 153,) and desired to take testimony to support our petition, and on the 14 June, 1866, petitioned the Court not to act until we could take testimony, which petition was supported by affidavit. See page 154.

But the Court on the same day remorselessly dismissed our petition—top of page 155—and on the same 14 June, 1866, dismissed the petition to withdraw the answers from the file—(bottom of p. 155.)

All the other heirs of Miss Dermott filed a petition on 22 June, 1866, similar to that of Dade Hooe and his sisters, praying that their answers might also be withdrawn because of fraud and imposition, which fully sets forth the particulars of said fraud.

See it in page 162.

But the Court summarily dismissed this without even requiring an answer from Jones. Page 165.

The principles on which these withdrawals were asked was simply to enable the petitioners to escape from the recently discovered frauds of an interested party, and the authorities fully sustained the application.

1 Dickens, 33.
2 Phillips, 676.
1 Daniel's Ch. Prac., 782.
19 Vesey, 628.

The amendment was in time even after replication.

1 Daniel's Ch. Prac., 783.
29 Equity Rule.

A party defrauded is never too late if he proceeds as soon as he discovers the fraud. 4 How. 560–1.

Where the facts appear on record the Appellate Court will correct the refusal of the Chancellor to allow an amendment.

H. & J., 466–7.

But this is more than an amendment, for it asks relief against fraud, by cancelling the fruits of the fraud.

In the U. States *vs.* The Armistead, 15 Peters, 594, this Court said that "Fraud will vitiate any, even the most solemn transactions, and an asserted title to property founded on it is utterly void."

And in Stoddard *vs.* Chambers, 2 How., 318, it is again said that "fraud vitiates all transactions—it makes void a judgment which is a much more solemn act than the issuing of a patent."

To constitute fraud there must be an intent to deceive, and it may be by misrepresentation or concealment, "the concealment of a circumstance which materially impairs the value of the thing sold, furnishes as conclusive evidence of the fraud as a direct and positive affirmation of that which is not true, and in morals, he who suppresses the truth is equally criminal as he who states a falsehood."

Hough *vs.* Evans, 4 M'Cord's R., 169.

If a party relies upon a material statement of another, and the statement so acted on is false and was made with intent to deceive, this amounts to fraud.

3 B. & C., 623.
2 Ld. Raym., 1118.

If Morgan was employed by Jones to obtain these answers for the benefit of Jones, or if Jones connived at his mission, then his representations, if made for the benefit of Jones, and false in material particulars, are to be regarded as the representations of Jones.

Paley on Agency, 302. Cro. Jae., 473.

And Jones is liable for Morgan's representations, if made as part of the *res gesta* of his agency, although without the privity or authority of Jones.

1 Strange, 653. 1 Campbell, 127.
Bridgman's Rep., 126–7. 2 Moll., 330.

By the action of the Court, we have been deprived of the opportunity to establish the allegations of our petition, which presents a clear case for equitable relief, and is not obnoxious to the objection that it was a simple application for an amendment of pleadings.

We submit that the Judge's course, however intended, secured to an alleged fraudulent actor all the fruits of his fraud without affording the injured party an opportunity to prove and unmask the artful contrivance of the Complainant.

SIXTH POINT.—***The Court erred in ordering publication and refusing to allow Defendants to take evidence on the merits.***

The 69th rule of this Court is adopted by the Supreme Court of the District of Columbia, and by its true construction we maintain that the Court, under the circumstances, erred in causing the testimony to be published.

This course was put at issue on the 6th March, 1866, by filing the replication on that day.

See p. 37, and 66th rule of both Courts.

The Complainant began his evidence on the 14th of March, 1866, and did not close it until the 2d of June, 1866, four days before the three months allowed by the 69th rule to take testimony.

See pp. 38 and 84.

On that 2d of June, 1866, the Commissioner closed and sealed the depositions, per his certificate. Page 84.

This cut us out of four days remaining of three months; and if we had served a notice *de novo* to take testimony, the time would have been too short for us to take any evidence under such a notice.

Therefore, there was irregularity in the closing and sealing of the depositions. We were clearly entitled to keep them open for four days to examine any witnesses we chose.

On the fifth of June, 1866, before the three months had expired, the Court set down the motion for publication of the testimony on the 8th of June, 1866, and on the same day the cause was set down for hearing by order of the Court. Page 133.

On the 8th of June, 1866, the day appointed for hearing of the publication, Dade Hooe and his sisters showed cause.

Record, p. 137.

1st. That a petition to take answers off *file*, was still pending and Defendants could not take evidence while pleadings were being perfected. If Defendants had gone on to take evidence under those disputed answers, it would have prejudiced their petition to take them off the *file* – nor could they be defaulted while perfecting pleadings.

If in Brockett *vs.* Brockett, 2 How, 241, a petition to open a decree which was so far recognized by the Court as to be referred to the

Auditor, was sufficient to suspend the decree until the petition was disposed of, then we hold that a petition filed by Defendants on the 23d of May, 1866, (supplemental record,) to withdraw their answers, recognized by the Court, so far by their order of 8th of June, 1866, (p. 136,) as to set for it hearing on the 11th of June, 1866, (p. p. 136-7,) should have equally suspended the order of publication of the evidence passed on the same 8th of June, 1866. (P. 137.)

Another cause assigned why publication should not be made, was the necessity of making Crosson and wife, two of the heirs, Defendants, as shown by their petition under oath.

See 136 and 137.

It will be seen that the Defendants could not know what rebutting evidence to adduce until the Complainant closed his case on the 2d of June, 1866, when the Examiner closed and sealed the depositions, and on the 5th of June publication was ordered, and Defendants deprived of the right to take any testimony whatever.

Our appeal brings up the order suppressing our evidence.

Wilson *vs.* Troup, 2 Cowan, 195.

But as the case was not finally decreed on until the 3d of July, 1866; we caused a notice to be served on Jones' Counsel that we would take evidence on the 19th of June, which he acknowledged in pencil, remarking "that the case was gone up."

Record, 167-8.

We have spread upon this Record the important testimony of three witnesses, James Bowen, Amon Duvall and William Ross, which tend to show the unskillful and defective character of Jones' work, and his non-performance of his contract. Pages 165–6–7.

If these depositions are admissible under the circumstances, they are material on the merits. If not admissible, they show at least part of what we might have proved if the opportunity had been afforded.

But the case was meant to be put through by Court and Counsel, at a double quick, and even before the final decree could be had on *ex parte* evidence, the Court adopting the Complainant's theory that Ingle, as administrator, had no right to collect the rents, appointed on Jones' petition his nominee, Jesse B. Wilson, as Receiver.

See pages 133 and 154.

Another ground for the reversal of this case is found in the Judge's construction of the 69th rule of the Supreme Court in regard ro the taking of testimony.

It will be seen by the Record that the Complainant consumed the three months by his evidence in chief, and then announced it closed, and on same day had it filed and moved for publication. The Defendants in vain excepted and prayed for an extension of time (under the rule) to rebut the testimony taken, but the Judge, as inexorable as Rhada-manthus, held that we were in fault for not taking testimony *pari passu* with the complainant. This error, we submit, saps the very foundations of justice, by literally paralysing all attempts at defence.

Seventh Point.—*The Court below erred in superseding Ingle and appointing a Receiver.*

The proceedings in this particular will be seen in
Pages 133, 143, 148 and 154.

No receiver of rents can be obtained by a creditor unless a strong probability of insufficiency of both real and personal estate be shown.
Warfield *vs.* Owings, 4 Gill, 379, 380, 382.

But same case decides that the Bill, (not a petition.) must charge insufficiency of personal and real estate, so as to require a receiver of rents or an injunction.
4 Gill, 380.

In that case Magruder dissented on the ground that in no event could the rents and profits be affected by a creditor, though the real and personal estate were insufficient.

If Jones is assignee of the two liens, amounting to about $3,000, set forth in his petition, his Bill only claims that these and all claims shall be paid according to priority.

He therefore does not file his Bill on the liens alone but in behalf of *all creditors*. No difficulty in paying off the liens assigned to him, which we tender ready to pay—nor does his petition entitle him to a receiver of the rents.
8 Page, 567, Note.
See answer of Ingle.

Creditors at large cannot go into equity.

5 G. & J. 452.
6 G. & J. Griffith *vs.* Fred Co. Bank.

Receiver will not be appointed, except where imminent danger, even where Defendant is in wrongful possession of lands.

Edwards' Receiver, p. 2, 24, 26, 29.
3 Md. 99.
1 Md. Ch. 70.

And so an injunction will be refused.

State of Georgia *vs.* Brailsford, 2 Dallas, 405.

Nor will it be granted at instance of a party whose right is not acknowledged.

1 Barb. Pract. 658.
1 Bland, 213.

The answers do not acknowledge Jones' claim, nor is the judgment against the Administrator any evidence against heir or devisee.

Gaither *vs.* Welsh, 3 G. & J. 259.
Birely *vs.* Staly, 5 G. & J. 432.

The recommendations of those most likely to be injured should have been regarded, and not Jones' wishes.

1 Bl. 427.
Edwards' Receiver, p. 3, 5.

If Ingle be Trustee or Administrator, there must be abuse or insolvency, to justify a receiver.

Edwards' Receiver, 43.

Ex parte affidavits rejected.

2 Md. 340.

Eighth Point.—*The decree was erroneous on its face.*

The final decree establishes the debt of Jones at $20,136.23, with interest from the 5th of April, 1852, and his costs for prosecuting his debt against Miss Dermott in her life, and since her death, at $445.01.

It then, without any reference to the Auditor to report what other indebtedness existed, decrees the sale of the whole real estate.

This is directly in contravention of the opinion of this Court, in a similar proceeding to sell the real estate on a creditor's bill filed in this District.

See Bank United States *vs.* Ritchie, 8 Peters, 128.

Chief Justice Marshall in that case (p. 142) intimates that the Act of Maryland (1785, ch. 72,) does not authorise a sale of real estate of adult heirs, (which is the case here.)

And in page 144, he decides that the decree was erroneous in not postponing the sale until the total amount of debts should be ascertained by the Auditor, and the Trustee informed as to the quantity of property he was to sell.

If Jones' debt had not been established, the annual rents would, in another year or two, have paid off all the other debts, or the amount could easily have been raised by mortgage on such a rent roll as is disclosed in this record, and a sale would thus have been prevented.

As it is, the decree erroneously ordered the sale of the whole property to pay Jones, and omits to adjudicate the amount or insufficiency of the personal estate, so as to subject the realty to the payment of the deficiency for which it was only responsible.

see 6 G. & J. 445

NINTH POINT.—*The question of restitution in case of a reversal.*

We are entitled to restitution of our property, even as against the purchaser, Jesse B. Wilson, who was receiver and a *quasi* party in the cause, and privy to the appeal pending when he purchased.

If a decree was erroneous on its face, and a party or *quasi* party purchased, his title will be properly set aside on a reversal of the decree.

Bank U. S. *vs.* Ritchie, 8 Peters, 146.
4 Selden, 138.

Even where there has been a sale under a decree when in force, the Appellate Court on reversal will decree restitution of the property condemned and sold.

6 Cranch, 329.

If the sale is to a party to the suit, it will not be protected upon writ of error as when made to a stranger.

Bacon's Abr. Error M. § 3.
Rolls' Abr. 778.

R. J. & J. L. BRENT,
S. L. PHILLIPS,
For *Appellant.*

In the Supreme Court of the United States.

JOHN H. INGLE, Adm'r *de bonis non* of Ann R. Dermott, and *al*, vs. ZEPHANIAH JONES. } *No.* 75. *Dec.* 7, 1868.

On the 22d day of April, 1851, complainant entered into a written contract with Ann R. Dermott to construct certain buildings according to prescribed specifications, and to complete part of the work (being the stores on Market Space and the warehouse on Seventh street) on the first of October following, and the residue on the first of December following.

The contract and specifications are filed, (marked Z. J., Exhibit No. 2.) R., 14–28.

Ann R. Dermott agreed to pay for the buildings $24,000 by instalments, as follows: $5,000 on the first of July, 1851; $5,000 on the first of October, 1851, *provided the stores and warehouse were then ready for use and occupation,* and the residue of $14,000 on the first of January, 1860, with interest on $4,000 from the first of May, 1851, and on the balance from the first of December, 1851, and to give her bond for said residue of $14,000, payable with interest as aforesaid, and secured by a deed of trust upon the property.

The first instalment of $5,000 was paid in July, 1851; in October, 1851, payment of the second instalment was demanded by the complainant. Owing to delays caused by Ann R. Dermott, and also to the sinking of the south wall of the warehouse, the stores and warehouse were not then finished. Except as respects the sinking of said wall, they

were completed and delivered in December, 1851, and the residue of the work in April, 1852.

After delivery and acceptance, suit was brought by Jones for the $5,000 payable the first of October, 1851, the second instalment, and he obtained a verdict and judgment for the full amount. The case being carried to the Supreme Court of the United States, the judgment was reversed on the ground that the declaration averred performance of the special contract, and that *time*—the finishing the stores and warehouse on the first of October—was of the essence of the contract, so that, whatever the cause of the delay, Jones could not recover under the special contract, but that his remedy was under the common counts "to recover such a remuneration as the benefit conferred was really worth," and subject to defendant's right to recoup any damages sustained by her owing to Jones's failure to perform according to contract.

The case is reported, 23d How., p. 220.

The right of the plaintiff to recover in another form of pleading is expressly affirmed, pp. 223, 231, and 235.

When the mandate was filed in the Circuit Court, application was made for leave to amend the pleadings by the withdrawal of all special counts, and enlarging the *ad quod damnum* clause of the common counts to $40,000. The death of Ann R. Dermott being suggested, her executor, John P. Ingle, was made defendant in her stead, and a bill of recoupment was filed by him claiming damages for delay in the completion of the buildings and for the sinking of the wall.

The case was again tried, and resulted in a verdict and judgment for plaintiff for $22,149, with interest on $20,137 from the 5th of April, 1852. At the trial the court ruled, that if Jones did his work in good faith and in accordance with the specifications, made part of his contract, he was not responsible for latent defects in the soil belonging to his employer.

The cause being again carried to the Supreme Court of the United States, that tribunal held that a mason undertaking to do work on the soil of another according to specifications prescribing the manner in which the work was to be done, became an insurer of that soil, and though working in good faith and adhering to the specifications, was responsible for damages caused by latent defects, notwithstanding the soil was approved as suitable by both the owner and her architect. The judgment was accordingly again reversed, and *procedendo* ordered.

This decision of the Supreme Court will be found reported in 2d Wallace, p. 1. Whilst the cause was before that tribunal, the death of John P. Ingle, Executor, was suggested, and John H. Ingle, Administrator *de bonis non cum testamento annexo* of Ann R. Dermott became a party.

The mandate having been filed in the Supreme Court of the District of Columbia, the case was again tried at the February Circuit, 1865, and the jury rendered a verdict for Jones for $20,136.23, with interest from the 5th of April, 1852, for which amount, with costs, judgment was rendered and a reference was ordered to the Auditor to ascertain and report the personal assets of Ann R. Dermott in the hands of John H. Ingle, her administrator. From the above judgment an appeal was taken to the Court in General Term, by which the judgment was affirmed on the 3d of June, 1865.

The report of the Auditor was filed on the 7th of July, 1865, and showed that there were no personal assets applicable to the debt.

Here ended the proceedings at law. A complete record of them is filed in this cause.

The complainant finding it impossible to obtain at law satisfaction of his debt, on the 30th of August, 1865, filed his bill in this cause.

Ann R. Dermott left a will, whereby she devised her real estate to her executors, and the survivors or survivor for

what is styled an uncertain term, and charged with the payment of debts and legacies, and after such payment to trustees and the survivors and survivor in trust, for certain charities.

A copy of the will, duly certified, is filed, marked Z. J., Exhibit No 1. R. 6, 13.

At the filing of the bill, the real estate was encumbered by six deeds of trust—three, and among them the eldest, in favor of the late Richard Smith, trustee, and his heirs, and the rest in favor of John Carroll Brent, trustee, and his heirs. She was also largely indebted to general creditors, besides complainant.

The claimant made the following parties defendants to his bill:

1. The surviving trustees, fifteen in number—three residents of this District, and the rest non-residents. On the former process was duly served. But one, John A. Smith, appeared, and he filed a disclaimer. Against the other two decrees *pro confesso* were taken at October and November Rules, for default of appearance and answer. (R. 29.) The non resident trustees having been returned "*non sunt*," publication was, on affidavit of non-residence, filed October 9th, 1865, ordered against them October 14, 1865, and publication having been duly made for four months, and said parties failing to appear and answer, an order was passed taking the bill *pro confesso*.

2. The legatees in said will. The annuitants, Elizabeth L. Thompson and Catharine F. Thompson, non-residents. The former having died, and there being no representative upon her estate, the latter was duly published against, and the bill taken *pro confesso* against her. (See above orders of publication and *pro confesso* R. 35, 37.)

Walter Jones having died, process was served on Thomas Miller, his executor, who failed to appear, and bill taken *pro confesso* at October and November Rules.

Richard Smith having died, process was served on Covington Smith, his executrix, who failed to appear, and bill taken *pro confesso* at same Rules.

The widow and the children of the late William Hawley. Widow died, but children entitled to legacy. Only two children known. Published against and Bill taken *pro confesso*.

Robert James, published against and decree *pro confesso*.

Genetta Johnson and Sophia McCormick. Served with process, and order *pro confesso* at October and November Rules.

3. The heirs-at-law of Richard Smith, deceased, trustee under oldest Deed of Trust and holder of the legal title, served with process or published against.

4. The creditors secured by the several deeds to Richard Smith. Catherine Smith served with process, the rest published against—against all the Bill taken *pro confesso*.

5. John Carroll Brent and the creditors secured by the Deed of Trust to him. Brent served with process, but failed to appear and answer, and bill taken *pro confesso* at October and November Rules.

Subsequently, on the 12th of March, 1866, a paper was filed by him purporting to be an answer, but no answer could be filed without the leave of the court, which was not obtained. R., 38.

The creditors were duly published against, and bill taken *pro confesso*.

6. The tenants of the real estate served with process and order *pro confesso* at October and November Rules.

7. John H. Ingle and Osborne Ingle, executors of John P. Ingle, deceased, executor of Ann R. Dermott, made parties for the purpose of settlement of account of John P. Ingle. They appeared and answered.

8. John H. Ingle, administrator *de bonis non cum testamento annexo*, made a party for settlement of account. He

appeared and answered November 7, 1865, after decree *pro confesso* for default of appearance at October rules.

9. Assuming the charities of the will to be void, the heirs-at-law of Ann R. Dermott were made defendants, as the trustees would then hold for their benefit, subject to the devise to executors, and the claims of creditors specific and general.

Dashiell v. Attorney General, 5 Harris and Johnson, 392.

Ibid, 6 Harris and Johnson, 1.

The bill avers that the complainant, after dilligent inquiry, had been unable to find out the heirs-at law of Ann R. Dermott, on the part of her father, and that they were non-residents, and that so far as he had been able to find out the heirs-at law on the part of her mother, they were as set forth in the bill, and all non-residents, and that if there were others, they were non-residents, and were unknown after diligent inquiry.

The parties mentioned as heirs, were all made defendants, and appeared and filed their answers on the 9th of October, 1865. R., 33. Other parties, viz: Jane S. Farrow, Susan Garlington, and her husband, John Garlington, and Eliza L. Bellew, also appeared and answered on the same day.

With respect to the unknown heirs-at-law, whether on the part of the father or on the part of the mother, the bill avers *that the complainant is a citizen of the District, and that the debt sought to be recovered was contracted here, and the proof establishes these facts.*

In such case the act of assembly of 1794, ch. 60, sec. 3. provides that the Chancellor may, on such notice being given as he shall direct, and on the proof of the debt to his satisfaction, decree the sale of any real estate devised or descended to unknown devisees or heirs-at law.

See also Alexander's Chancery Practice, 44.

On the 14th of October, 1865, and after the above answers were filed, the court, on the affidavit of complainant that the heirs-at-law of Ann R. Dermott, save such as had appeared

and filed their answers, were unknown and non-residents, ordered publication against them, and that if they failed to enter their appearance in this cause on or before the first Tuesday in March, 1866, the bill should be taken *pro confesso*. R., 35.

Publication having been made as required, the bill was, on the 7th day of March, 1866, taken *pro confesso*, against such unknown heirs-at-law.

To the answers filed, the complainant entered his replication on the 6th of March, 1866, and proceeded to take evidence. (R. 38, 88.)

Why should he not have the relief prayed? The evidence is conclusive as to the debt.

The heirs-at-law are either bound by the decree *pro confesso*, or so far as they have answered, either admit that Ann R. Dermott died indebted to the complainant, or declare their willingness that what is justly due should be paid.

The insufficiency of personal assets is shown by the report of the Auditor, and also by the testimony of John H. Ingle, who was examined as a witness. (R. 77)

The answer of John A. Smith is simply a disclaimer.

That of J. C. Brent was filed without leave, and had leave been obtained, is utterly overthrown by proof.

The answers of the executors of John H. Ingle relate solely to his administration as executor.

The answers of the heirs-at-law do not deny complainant's claim, and it is established by proof.

There remains but the answer of John H. Ingle, who denies the debt, and urges sundry objections to its payment.

Now, 1st. John H. Ingle, administrator *de bonis non cum testamento annexo*, had no sort of interest in the real estate in controversy. He was called into court merely to settle his account of the personal estate not administered by his predecessor, and no decree was asked against him.

He did not succeed to the powers and control over the

real estate possessed by the executor. He could only get them *virtute officii*, which is absurd, or by the appointment of the testatrix; and, so far from the will making any such appointment, by the strongest implication it is guarded against.

Gaither vs. Welch, 3 G. & J. 259.
Birely vs. Staley, 5 G. & J., 432.
David vs. Grahame, 2 H. & G., 94.
Dominick vs Michael, 4 Sand, (N. Y.,) 374.
Conklin vs. Egerton, 21 Wend., 430.
Beckman vs. Bonsor, 23 N. Y., 29.
Wills vs. Cowper, 2 Hamm, 124.
Greenough vs. Welles, 10 Cush., 571,
Act of 1798, Ch., 101 Sub, ch. 14, § 2.
Collinson vs. Owens, 6 G. & J., 9.

But, secondly. If he succeeds to the powers and control of the executors over the real estate, the verdict and judgment recovered against him worked an *estoppel*. The case was tried and determined against him.

And, thirdly. At October Rules the bill was taken *pro confesso* against him as administrator, as well as against him and Osborn Ingle as executors, for default of appearance. No answer could be filed without leave.

But, what does John H. Ingle urge in opposition to the claim of the complainant?

1. He denies its validity. But the claim is established, beyond all doubt, by proof, and by his own showing a large amount is due.

2. He pleads the want of proper parties, and avers that the heirs-at-law of Richard Dement, to whom the property was conveyed on the 15th of May, 1846, by a deed of trust to secure a debt, ought to be made defendants. See his answer. But he was examined as a witness by the complainant, and established beyond the shadow of doubt that the debt was paid. He produced the deed of trust and the evidences of debt secured by it. R., 77.

3. He pleads *lis pendens* and an election made in a former suit, whereby Jones elected to proceed in equity for only the $14,000.

But the former suit is not pending.

By the death of Ann R. Dermott it abated, and has never been revived.

Moreover, the present bill is essentially different from the other, which was a suit for the specific performance of the contract, Jones claiming his right to the security provided for by the contract. The Court ruled that the defendant should not be twice vexed for the same demand, and hence the election. The first decision of the Sumpreme Court U. S. virtually ended the chancery suit then pending, and discharged Jones from the election. The condition precedent was equally a bar to the bill for specific performance as to a suit at law upon the special contract.

The present bill was instituted by the complainant, not for specific performance, but to reach equitable assets for the satisfaction of his debt, after he had exhausted his remedy at law. There is no double vexing here. After the death of Ann R. Dermott, and the division of her estate into two funds—one represented by the personal representative, and the other by the devisees, or heirs-at-law, if the former is insufficient, a creditor must pursue the latter or go unpaid.

The two proceedings, when Jones elected, were held co-ordinate and distinct; and hence the election.

The work under the contract had all been completed, and the credits had all matured when the bill was filed.

The present proceeding is merely auxiliary.

4. He pleads the Statute of Limitations.

But in Equity, the defence of limitations avails only in favor of the party who sets it up. (Dixon vs. Dixon, 1 Maryland Ch., Dec., 271; McCormick vs. Gibson, 3d G. & J., 212; Collinson vs. Owens. 6 G. & J. G.)

He has no interest in the real estate to protect by the plea;

and if he had such interest, the verdict and judgment were conclusive.

Where one of several heirs-at-law or devisees pleads the Statute, the others cannot take advantage of it. (Alexander's Chancery Practice, 143.)

Here, too, the plea was pleaded after the party was in contempt for default of appearance, and an order *pro confesso* had passed against him.

It would be a waste of time to state other objections to limitations in this case.

I. There was no error in the order of June 8, 1866, ordering publication of testimony. The cause was at issue March 6, 1866. (R 37. Motion for publication and order; R. 133, 137. See Equity Rule 69.) The allowance of further time was in the sound discretion of the Court.

II. The petitions of June 14, 1866, and June 18, 1866, were not in conformity with Equity Rule 6. The former was not sworn to, and neither explained laches, nor showed materiality of testimony.

2 Daniel, 1136, Rule 69.

Hammersley vs. Lambert, 2 Johns, Ch. 432.

Wood vs. Mann, 2 Sumner, 316.

III. Order of July 3 1866, refusing petition of Crosson and wife. (R. 136.)

First. The petitioners had been duly published against, and a decree *pro confesso* rendered March 7, 1866.

See acts of 1785, Ch. 72; 1795, Ch. 88; 1799, Ch. 79, § 9; 1794, Ch. 60, § 3.

The petitioners never appeared to the suit. They did not propose to appear or answer, or take any step in the suit. No cause was shown against the decree *pro confesso*, and there was no explanation of laches nor any averment of a defence. *The prayer was substantially to delay four months longer in publishing another order of publication.*

See Luckett vs. White, 10 G. & J., 480; Pinkney vs. Jay, 12 G. & J., 69.

Secondly. Crosson and wife were not necessary parties to the suit. They might, if known when the bill was filed, have well been omitted. But they were unknown, and non-residents, and, besides, represented mere equitable interests, the legal estate under the will being vested in the trustees, who were made parties defendant. The estate and powers vested in the executors furnish an additional reason why those petitioners were not necessary parties.

Story's Equity Pl., §§ 81, 87, 88, 89, 92.

Mitford's Chancery Pl., 32, 174, 180.

French vs. Barron, 2 Atk., 120.

Rules 47, 49, 50.

Tongue vs. Morton, 9 Har. & Johns, 21.

Fenn vs. Craig, 3 Younge & Coll., 216, 224.

Alexander's Ch. Pr., 34.

IV. The petition to withdraw the answers of Dade, Hooe, and others are not in the record, but the answer of Jones, the proof taken, and the refusal of the Court to allow the prayer of the petition are there. There was no error in this.

Curling vs. the Marquis of Townshend, 19 Ves., 631.

V. The Court was right in refusing to grant the petitions of Dade, Hooe & al. and Maria S. Anderson & al., and also the petition to take testimony in support of the former.

Story's Eq. Pl., § 496.

Mitford's Chancery Pl., 327, 328.

Smith vs. Babcock, 3 Sumner, 583.

Vandervere vs. Reading, 1 Stockton, 449.

Howe vs. Russell. 36 Maine, 124.

2 Daniel's Chancery Pl. & Pr., 911, and authorities cited.

Rule 60.

Story's Eq. Pl., § 426.

BRADLEY & DAVIDGE.